

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS**

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:

TILDEN WOODS RECREATION ASSOCIATION

Petitioner

Barbara Ship

Sara O'Neil-Manion

John Coventry

Gregory J. Osband

John Burgett

Gerri Diamond

Bill Bullough

For the Petitioner

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Department of Permitting Services

Anna Epstein

Sidney Drill

Elena Spak

In Support of the Modification Request

Suzanne Keller

B. J Sadoff

Donald Evans

Opposed to the Modification Request

Before: Martin L. Grossman, Hearing Examiner

Board of Appeals No. CBA-1383-A
(OZAH No. 11-24)

**HEARING EXAMINER'S REPORT AND RECOMMENDATION ON MAJOR
MODIFICATION REQUEST**

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I. STATEMENT OF THE CASE

A. Procedural Background

The Tilden Woods Recreation Association was granted a special exception on April 26, 1963, to permit the construction and operation of a community swimming pool on property consisting of approximately two acres, described as Parcel B, Block 14, Tilden Woods Subdivision, and located at 6806 Tilden Lane,¹ Rockville, Maryland 20852 in the R-90 Zone. 4/30/10 Hearing Exhibit 16.² The Board of Appeals' resolution authorized a community swimming pool with 350 member families, and imposed three conditions:

1. Fencing and screening of the north and west boundaries shall be in accordance with Exhibit 11 [*i.e.*, the Site Plan].
2. Instead of the five foot chain link fence proposed on the south and east, the association shall provide a five foot wooden fence along the eastern and southern boundary lines set back at least three feet from the property. The three foot planting strip between the property line and the fence shall be planted with evergreen shrubs or trees so as to adequately screen the pool from view.
3. The hours of operation shall be from 9:00 a.m. to 9:00 p.m., six days a week, and from 11:00 a.m. to 9:00 p.m. on Sunday. There may be six late nights of operation no later than 11:00 p.m.

The Tilden Woods Pool has been in operation for more than 45 years at the authorized location. 4/30/10 Hearing Exhibit 37. On June 23, 2009, Barbara J. Piczak of the Department of Permitting Services (DPS) inspected the premises. On June 29, 2009, Ms. Piczak issued an Inspection Report noting five violations of the special exception. The violations included 1. Incorrect fencing; 2. Early Sunday operations; 3. Nonconformance with the site plan regarding unapproved

¹ The original special exception apparently listed the address as 6808 Tilden Lane, because it was so referenced in earlier documents pertaining to this case. It has since been changed to 6806 Tilden Lane, which is the address listed on the subject modification petition (Exhibit 1), as well as in the current tax records and on the property sign. Tr. 281-282.

² The Hearing Examiner has held two hearings related to Tilden Woods. The first was the result of a limited referral to the Hearing Examiner regarding a requested administrative modification, and that hearing was held on April 30, 2010. All transcript references to that hearing and references to exhibits admitted at that hearing will be preceded by "4/30/10." All references to the May 6, 2011 hearing and its exhibits in the subsequent modification case (CBA 1383-A) will contain no date reference.

structures and parking configuration; 4. An unapproved metal storage container; and 5. Failure to maintain landscaping. 4/30/10 Hearing Exhibit 18.

Petitioner's initial response to the Violation Notice was to request, on June 29, 2009, that the Board grant a "one time waiver" so that the Swim Club could conduct its "Swim Team Lock-in" event, a sleep-over on pool property for the swim team scheduled for July 25-26, 2009. 4/30/10 Hearing Exhibit 19. This request was opposed by neighbors B.J. Sadoff and Suzanne Keller (4/30/10 Hearing Exhibits 20, 21, 23 and 24). The Board treated the waiver request as a request for an administrative modification and considered it at two Board sessions, held on July 8 and July 15, 2009. At the end of the second session, a motion to approve the administrative modification (*i.e.*, the one-time waiver request) was defeated. A resolution to that effect was issued on September 18, 2009. 4/30/10 Hearing Exhibit 39.

On December 23, 2009, the Board of Appeals received a letter from Soo Lee Cho, Esquire, on behalf of the Tilden Woods Recreation Association, requesting administrative modification of the special exception to approve a variety of changes to the physical plant and operational conditions. 4/30/10 Hearing Exhibit 31. This administrative modification request engendered opposition from the community and requests for a hearing. 4/30/10 Hearing Exhibits 33, 34 and 35.

By resolution effective January 29, 2010 (4/30/10 Hearing Exhibit 40), the Board determined, *inter alia*, to refer

. . . the entire modification request to the Hearing Examiner to conduct a public hearing limited to determining whether the requested modifications can be approved under Section 59-G-1.3(c)(1) of the Zoning Ordinance, and whether, under Section 59-G-1.3(c)(4)(A), the proposed modification expands the total floor area of all structures or buildings by more than 25% or 7,500 square feet, whichever is less, and if so, whether the Board should require that the special exception be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of Section 59-G-1.26.

Pursuant to this resolution, a hearing was held on April 30, 2010, limited to addressing the issues referred to the Hearing Examiner by the Board. It therefore did not directly assess the merits of the underlying administrative modification request.

On June 28, 2010, the Hearing Examiner issued a report to the Board. The report concluded the following in response to the Board's questions:

1. The requested modifications cannot be approved under Section 59-G-1.3(c)(1) of the Zoning Ordinance;
2. The proposed modification expands the total floor area of all structures or buildings by more than 25%; and
3. The Board must hold a hearing to ensure that the special exception is brought into compliance with the lighting and operational standards necessary to avoid any undue impact upon the neighbors.

The Board convened again on July 21, 2010, to discuss the case and the Hearing Examiner's report. At that Work Session, the Board adopted a resolution, which was issued effective September 10, 2010. In that resolution, the Board voted "to refer the full modification to the Office of Zoning and Administrative Hearings for a public hearing," and stated, "The Board concurs with the Hearing Examiner that within the scope of the modification request, the modification hearing should address operational, fencing and lighting issues."

According to the Board's discussion at its July 21, 2010 work session, the Board "expect[s] there to be an operational plan submitted as part of this process." 7/21/10 Tr. 11. The Board's discussion also indicated that the Hearing Examiner should consider impacts of proposed changes on the neighborhood, including lighting, fencing and noise issues. 7/21/10 Tr. 11-12.

On December 30, 2010, Petitioner filed a full modification petition (CBA-1383-A), including revised plans and a proposed statement of operations. Exhibits 1-7. That modification petition is the subject of this report and recommendation.

On January 21, 2011, the Hearing Examiner issued an Order giving notice of a hearing on the modification petition for May 6, 2011, following review by Technical Staff and the Planning Board.³ Exhibit 13. After Technical Staff requested additional information, Petitioner supplemented its submissions on March 4, 2011. Exhibits 24 and 29. These submissions also contained letters from the Department of Permitting Services (DPS) opining as to the propriety of swim meets (Exhibit 24(e)) and setbacks provided (Exhibit 24(f)). Members of the community also filed letters and materials expressing their concerns and their bases for opposition to Petitioner's plans. Exhibits 23 (from Donald and Ruth Evans); 25 and 27 (from B.J. Sadoff); 26 and 28 (from Suzanne Keller); and 31 (from Heidi Unkle).

On April 8, 2011, Petitioner filed a Transportation Management Plan; a greatly expanded proposed Statement of Operations, including a proposed 5K run to be headquartered at the subject site; and an explanatory memorandum to Technical Staff. Exhibit 36. After receiving community input (Exhibits 39 – 41; 43 and 44), the Hearing Examiner issued an Order on April 25, 2011, granting Petitioner's motion to amend the modification petition. Exhibit 46.

On April 20, 2011, Technical Staff issued a report recommending that the modification petition be granted with conditions, but that Petitioner not be permitted to host the aforementioned 5K Run. Exhibit 45. Mr. Sadoff filed comments addressed to the Planning Board regarding the Technical Staff report on April 25, 2011. Exhibit 48. On April 28, 2011, the Planning Board met and voted 3-0⁴ to recommend approval of the modification petition, with conditions, but that Petitioner not be permitted to host the 5K Run. Memorandum of May 3, 2011 – Exhibit 58. The memorandum also modified recommended dates and hours of operation and requested that the record

³ That order noted that prior exhibits and testimony accepted into evidence in the previous OZAH proceeding on April 30, 2010, in CBA-1383, and exhibits accepted into the record in relation to that hearing will be considered part of the record in this case and may be used in all future proceedings (*i.e.*, duplicate exhibits and testimony are unnecessary.)

⁴ Planning Board Chair Françoise Carrier recused herself from this case, and Commissioner Alfandre was absent.

be left open for three weeks after the hearing to allow Technical Staff to review revised plans.

Based on recommendations made by the Planning Board, Petitioner amended its summary of proof on May 2, 2011 (Exhibit 51(a)), and filed a revised landscape plan (Exhibits 56(a) and 57(a)) on May 5, 2011. The hearing proceeded as scheduled on May 6, 2011. Petitioner called seven witnesses, and three additional witnesses (pool members) also testified in support of the petition. Susan Scala-Demby, DPS's Zoning Manager, testified at the request of the Hearing Examiner to explain her opinion regarding the proposed 5K run. Neighbors Suzanne Keller and B. J Sadoff, who live on adjacent Stonewood Terrace, testified in opposition. Additional modifications to the plans were suggested at the hearing, and the record was left open until June 3, 2011, to allow Technical Staff time to review the revised plans and to give all parties an opportunity to comment on the proposed revisions and to file closing arguments.

Petitioner timely filed the revised plans and submitted them for review by Technical Staff and the other parties on May 11, 2011, as well as revisions to the proposed Statement of Operations and Transportation Management Plan (TMP). At the Hearing Examiner's request, alternative forms of the Statement of Operations were submitted, with Alternative A containing the provisions desired by the Applicant and Alternative B containing the provisions recommended by the Planning Board. Exhibits 76 and 76(a) – (h). In response to an inquiry from Staff, Petitioner provided further explanation of its landscaping plans. Exhibits 77-79. On May 27, 2011, Technical Staff filed a supplemental report recommending approval of the revised landscape plan and Alternative B of the proposed Statement of Operations. Exhibit 80. Final comments were filed by the parties (Exhibits 81, 82 and 83), and the record closed, as scheduled, on June 3, 2011.

The core issue in this case is the compatibility of the proposed physical and operational changes with the immediate neighborhood. Although some of the modifications sought would

significantly expand the operations originally permitted in this special exception (*e.g.*, hours of operation), many of the proposed changes are designed to ameliorate existing site conditions (*e.g.*, lighting and screening) and operations (*e.g.*, noise and traffic) which have had a negative impact on the neighbors. Based on a careful review of the record, the Hearing Examiner largely agrees with the Planning Board's analysis and recommends approval of the majority of the modification petition with the conditions specified in Part V of this report.

B. The Scope of the Hearing

The Board of Appeals' resolution effective September 10, 2010 referred the full modification petition to the Office of Zoning and Administrative Hearings for a public hearing; however, the resolution specified that the modification hearing should address operational, fencing and lighting issues "within the scope of the modification request." Thus, the Board did not refer the matter to the Hearing Examiner to decide every issue regarding the operation of the subject site, but rather those related to the modification request.

On the other hand, Petitioner is seeking approval of revised site, landscape and lighting plans, as well as an extensive Statement of Operations and Transportation Management Plan. The inquiry is thus rather broad, and should address the neighbors' major concerns about hours of operation, lighting, screening, noise, traffic and parking. The creation of a Community Liaison Council should also provide a vehicle for resolving future concerns of the neighbors before they mature into disputes.

This review is restrained, to some extent, by the language in the Zoning Ordinance §59-G-2.56, which determines the specific standards for Community Swimming Pool special exceptions. Among other things, it provides: "*The provisions of subsection 59-G-1.21(a) do not apply to this section.*" Subsection 59-G-1.21(a) contains many of the general conditions usually applicable to special exception requests, and under the quoted sentence from §59-G-2.56, they do not apply to the

community swimming pool special exception.

Although Section 59-G-1.21(a) general standards do not apply in this case, the other subsections of §59-G-1.21 do apply, as do §1.22(a) (Additional Requirements); §1.23 (General Development Standards); §1.26 (Exterior Appearance in a Residential Zone); and the specific standards under § 59-G-2.56 for Community Swimming Pools.

The remainder of this report will address the issues raised by the requested modifications.

II. FACTUAL BACKGROUND

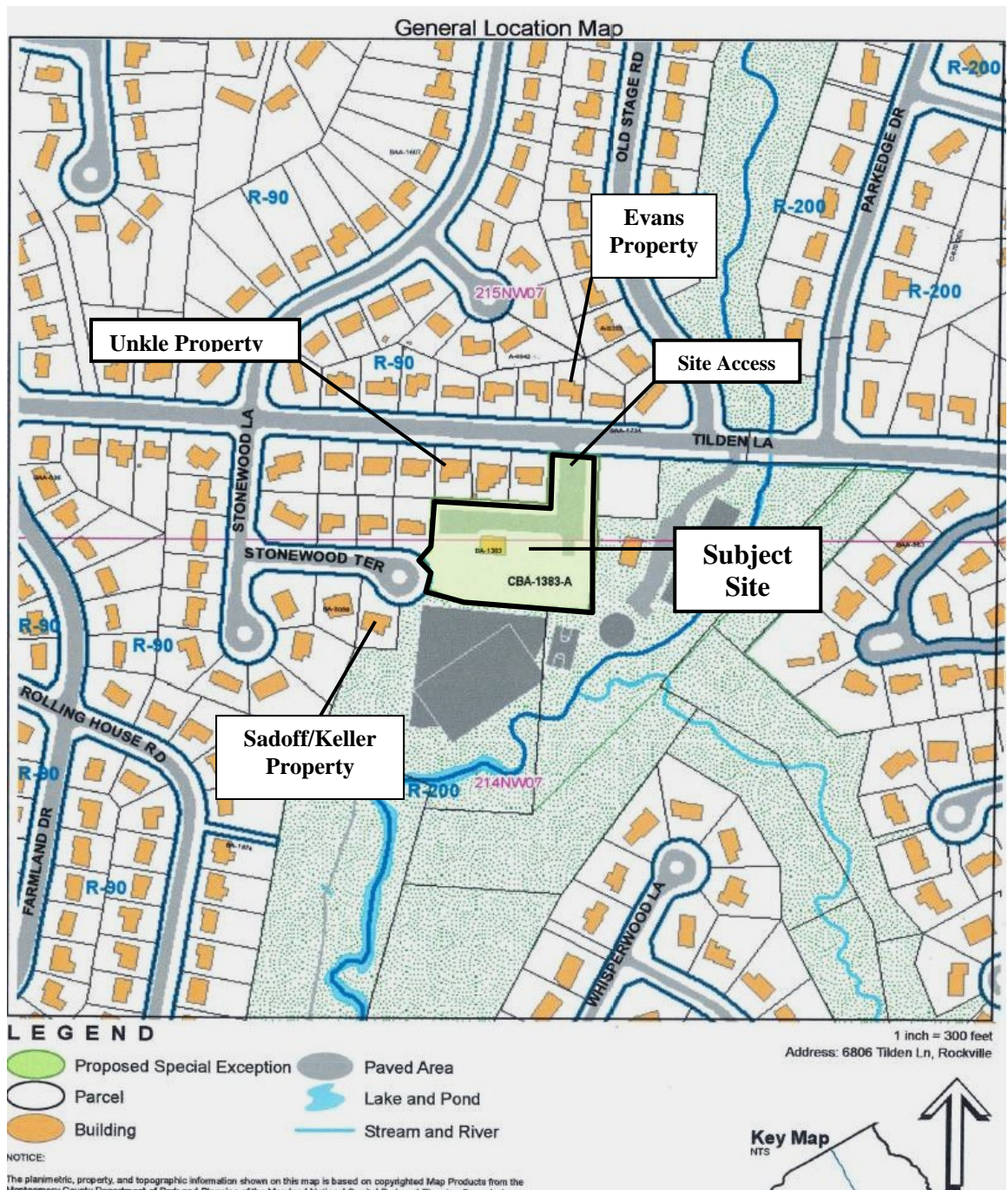
A. The Subject Property and Current Use

The Tilden Woods Recreation Association has operated a community swimming pool at the subject site for more than 45 years. The site, which is in a residential area of Rockville, consists of approximately 1.92 acres, described as Parcel B, Block 14, Tilden Woods Subdivision. It is located at 6806 Tilden Lane, in the R-90 Zone. It is depicted below in a Google aerial photograph:⁵



⁵ The Hearing Examiner takes official notice of Google photographs and maps reproduced in this report.

The subject swimming pool is located on the south side of Tilden Lane between the cul-de-sac on the eastern terminus of Stonewood Terrace and M-NCPPC's facility, known as Tilden Woods Local Park, which borders the subject site to the east and south. Vehicular access to the site's parking area is from Tilden Lane. These features can be seen below on the General Location Map provided by Staff (Exhibit 45, Attachment 1):



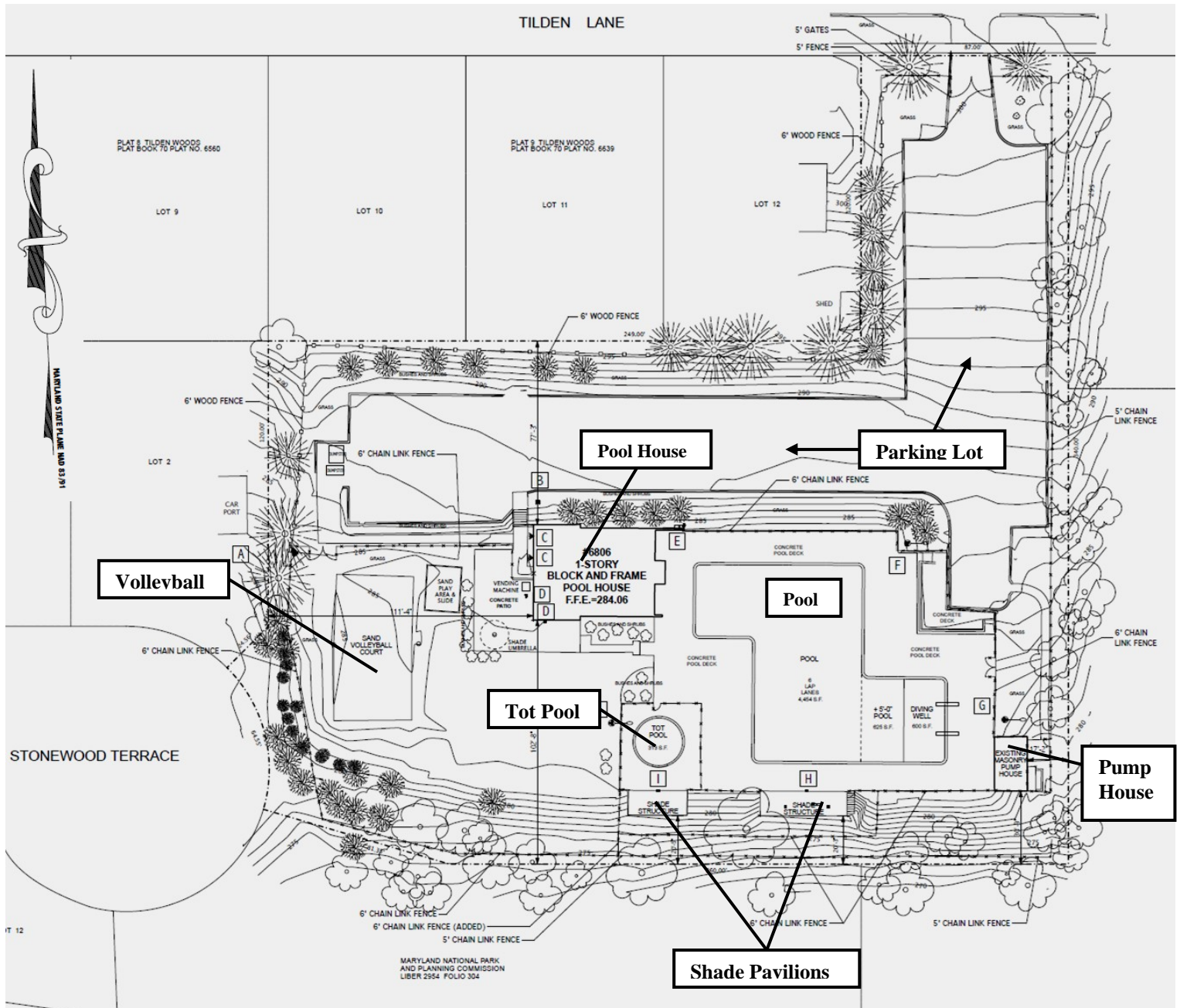
The following Google aerial photo, of which the Hearing Examiner takes official notice, shows the subject site and the immediate neighbors:



B. J. Sadoff and Suzanne Keller, whose home is close to the southwestern corner of the subject site (as labeled on the above photograph), have led the opposition. They were joined by Donald and Ruth Evans, who live on Tilden Lane, directly across from the entrance to the subject site, as depicted on the general location map reproduced on the preceding page. Mr. Sadoff and Ms. Keller have been most affected by the lights, noise and activity at the site (Exhibits 25-28), while the Evans have been most affected by traffic and spillover parking on Tilden Lane (Exhibit 23). One

other adjacent neighbor, Heidi Unkle, who lives just north of the subject site, wrote to complain about upkeep of the wooden fence abutting her property. Exhibit 31.

The current use of the site is depicted in the Existing Conditions Site Plan ((Exhibit 76(e)), reproduced below:



LEGEND

	LIGHT POLE
	LAMP POST
	GROUND LIGHT
	HC SYMBOL
	POLE
	CHAIN LINK FENCE
	BOARD ON BOARD FENCE
	PROPERTY LINE
	DIAGRAM OF EXISTING DECIDUOUS TREE
	DIAGRAM OF EXISTING EVERGREEN TREE
	DIAGRAM OF EXISTING SHRUBS

PROPERTY OF TILDEN WOODS RECREATION ASSOCIATION
 PLAT 16 TILDEN WOODS PLAT NO. 6977
 LIBER 3070 FOLIO 380 83,882 SQ. FT. or 1.9257 ACRES

LIGHT FIXTURE LEGEND

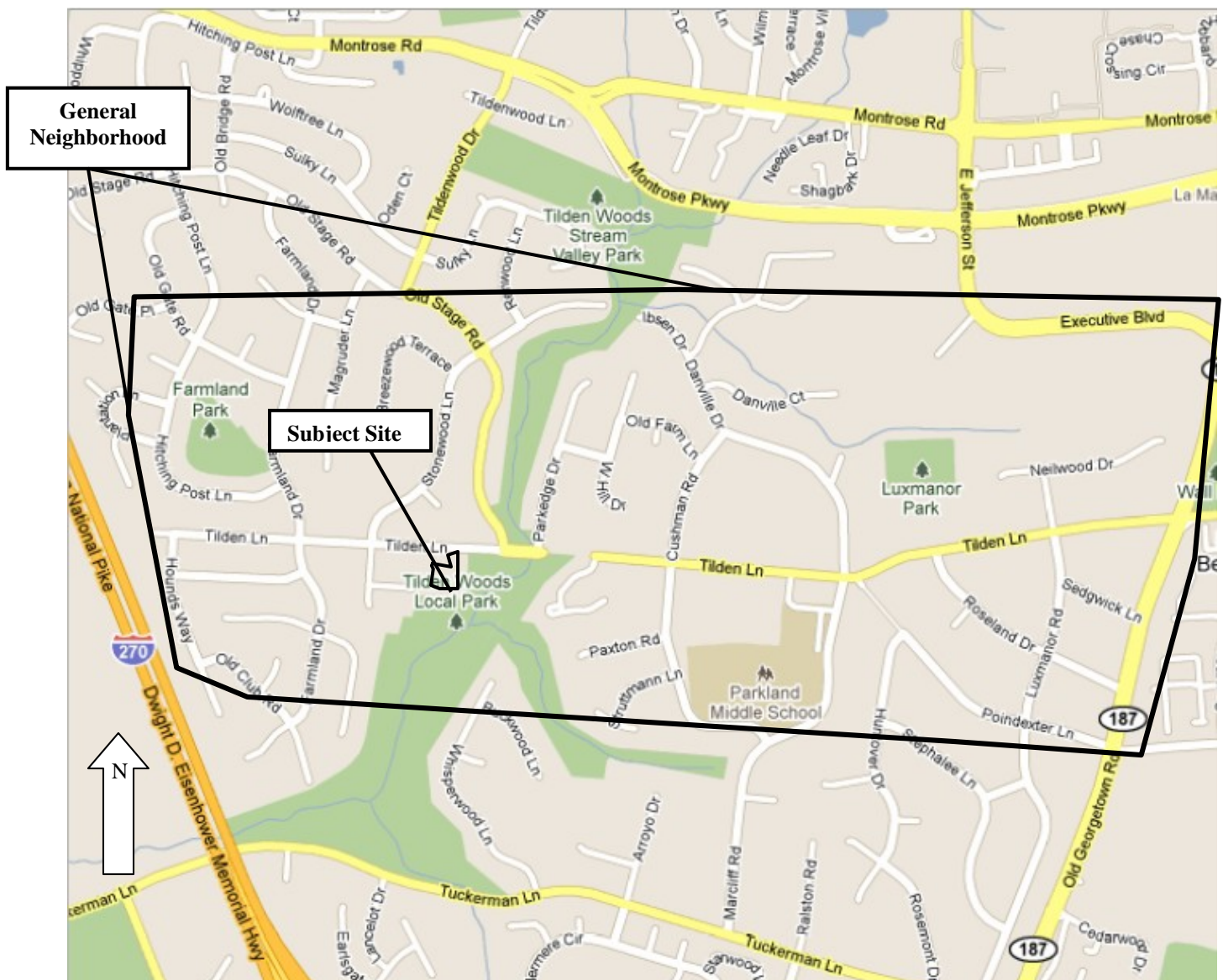
A	15' POLE WITH: 2 @ 100 WATT METAL HALIDE FLOODLIGHTS.
B	12' POLE WITH: - 1 @ 100 WATT HIGH PRESSURE SODIUM LATERN WITH LENSED PANELS.
C	3' POLE WITH: - 3 @ 35 WATT COMPACT FLUORESCENT LAMP (CFL) WALKWAY LIGHTS.
D	2 @ SWIVEL LAMPHOLDER WITH 90 WATT PAR FLOODLIGHT MOUNTED ON BUILDING.
E	12' POLE WITH: 4 @ SWIVEL LAMPHOLDERS EACH WITH 90 WATT PAR FLOODLIGHT.
F	12' POLE WITH: 4 @ SWIVEL LAMPHOLDERS EACH WITH 90 WATT PAR FLOODLIGHT.
G	12' POLE WITH: 4 @ SWIVEL LAMPHOLDERS EACH WITH 23 WATT PAR CFL FLOODLIGHT.
H	1 @ 100 WATT HIGH PRESSURE SODIUM LATERN WITH LENSED PANELS MOUNTED ON ROOF
I	1 @ 100 WATT HIGH PRESSURE SODIUM LATERN WITH LENSED PANELS MOUNTED ON ROOF
J	12' POLE WITH: 3 @ SWIVEL LAMPHOLDER EACH WITH 90 WATT PAR FLOODLIGHT.

The site has a significant slope, from north to south and also from west to east, so the lowest point is on the southeast. Tr. 75-76. The property contains an existing pool and associated accessory uses, such as a tot pool, a concrete deck, a pool house, shade pavilions, a pump house, a sand volley ball court, a sand play area, lighting, fencing and 64 parking spaces, three of which are handicap accessible. The only access is off Tilden Lane. Membership was limited to 350 families by the original special exception grant, and no increase in that number is sought by Petitioner. It should be noted, however, that Petitioner defines an individual membership as half of a family membership. Exhibit 45, p. 4.

A Forest Conservation Plan (FCP) exemption has been granted for the proposed modifications to the site because they do not involve the clearing of any forest or trees. Exhibit 7. The exemption (#42011092E) was issued by the Environmental Planning staff on December 22, 2010.

B. The Neighborhood

Technical Staff proposed to define the general neighborhood as bounded by the Washington Science Center to the north, Old Georgetown Road to the east, Tilden Woods Local Park to the south and Hounds Way to the west. Exhibit 45, p. 5. The borders suggested by Staff to the north, east and west do not appear on any map supplied by Staff, and the Hearing Examiner will therefore use the following Google map, of which he takes official notice:



The Hearing Examiner generally accepts the neighborhood definition proposed by Technical Staff because the proposed boundaries encompass those who would be most affected by the proposed modifications, including the resulting increase in traffic on Tilden Lane. The boundaries should be clarified, however, because Staff did not identify the location of the Washington Science Center, which is situated on Executive Boulevard, to the north. Moreover, because the modifications will have some impact on the abutting Tilden Woods Local Park, the Hearing Examiner would expand the neighborhood definition to the south to include a portion of the park, making the southern end of Parkland Middle School the southern boundary, as shown on the above map. On the north, the boundaries are indicated by Stonewood Lane and Executive Boulevard. As suggested by Staff, the eastern boundary is Old Georgetown Road and the western boundary is Hounds Way.

The neighborhood was described by Technical Staff as follows:

“The area to the south and east surrounding the property is the County-owned parkland that includes a softball field, tennis courts, basketball court, and a parking lot. The properties to the north and west of the community swimming pool and along Tilden Lane and Stonewood Terrace are in the R-90 zone and contain single-family detached houses.

To this description, the Hearing Examiner would add that almost all of the defined neighborhood is residential and parkland in the R-90 and R-200 Zones.

C. Proposed Modification

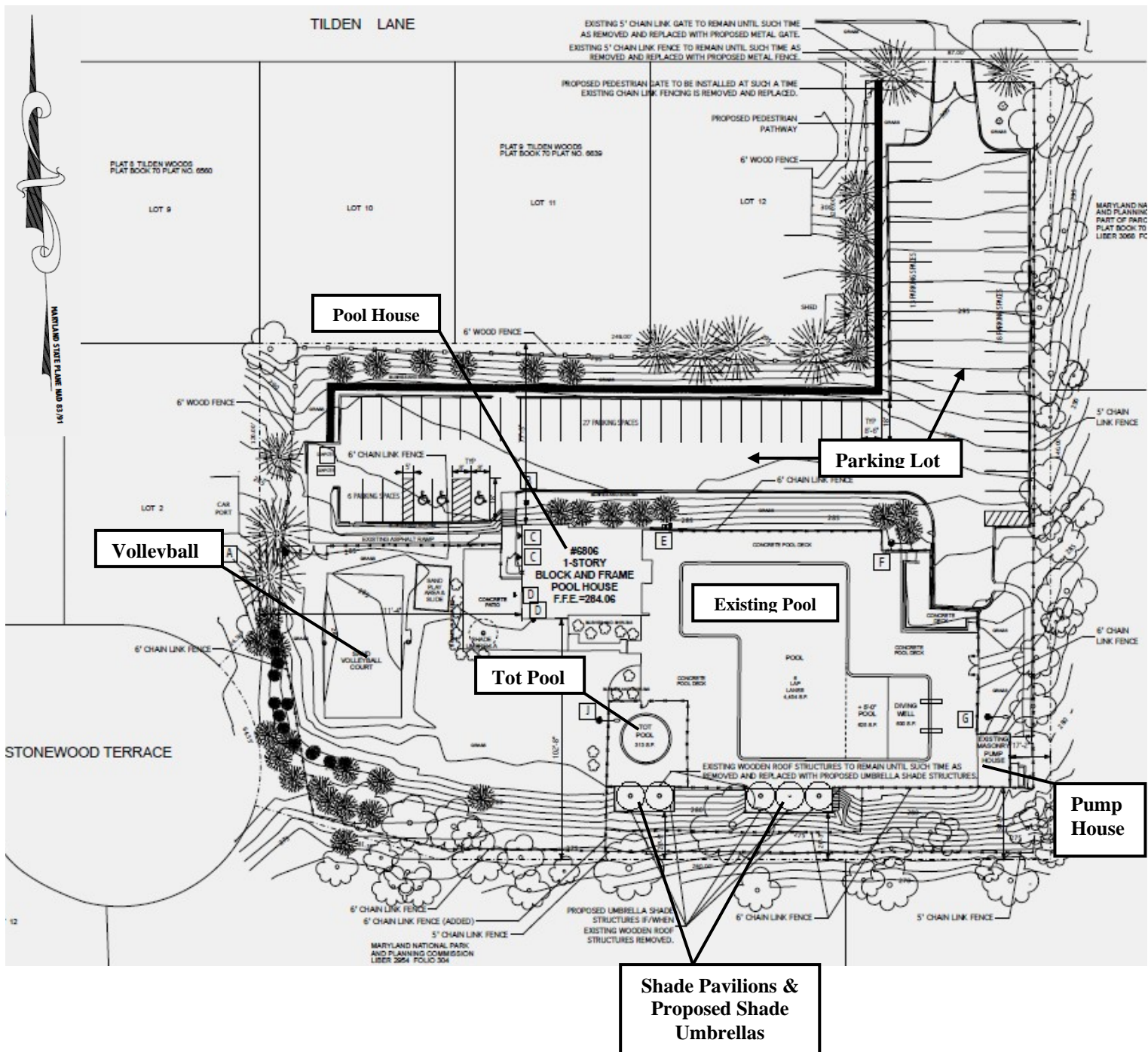
Petitioner Proposes:

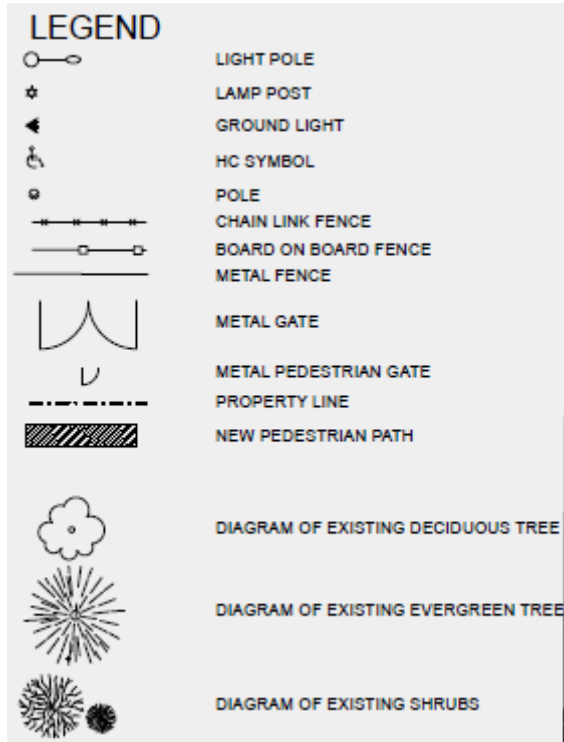
1. Approval of a revised Site Plan showing “as-built” structures, as well as intended modifications (Exhibit 76(f)); a revised Lighting Plan (Exhibit 76(g)); and a revised Landscape Plan (Exhibit 76(h)).
2. Approval of an extensive Statement of Operations (Exhibits 76(b)).⁶
3. Approval of a Transportation Management Plan (Exhibit 76(d)).

⁶ At the request of the Hearing Examiner, Petitioner submitted two alternative versions of the proposed Statement of Operations. Alternate A (Exhibit 76(b)) is Petitioner’s preferred Statement of Operations and Alternate B (Exhibit 76(c)) is the Statement of Operations as recommended by the Planning Board and later by Technical Staff.

1. The Revised Site Plan:

A Site Plan showing “Existing Conditions” on the Site (some of which have not previously been approved by the Board of Appeals) is contained in Exhibit 76(e), which is reproduced on page 12 of this report. Reproduced below and on the following page is the revised “Special Exception Site Plan” (Exhibit 76(f)) showing the site plan with proposed changes:





LOCATIONS OF EXISTING LANDSCAPING SHOWN ON THIS PLAN ARE REPRESENTATIVE ONLY. FOR A MORE ACCURATE DEPICTION OF EXISTING LANDSCAPING AND IMPLEMENTATION OF PROPOSED SUPPLEMENTAL LANDSCAPING AT SOUTHWEST CORNER OF SITE AS APPROVED IN CASE NO. CBA-1383-A, SEE LANDSCAPE PLAN PREPARED BY A. MORTON THOMAS.

PROPERTY OF TILDEN WOODS RECREATION ASSOCIATION
 PLAT 16 TILDEN WOODS PLAT NO. 6977
 LIBER 3070 FOLIO 380 83,882 SQ. FT. or 1.9257 ACRES

LIGHT FIXTURE LEGEND

- A** EXISTING 15' POLE WITH:
 - 2 @ HUBBELL MIC-007OH-358 METAL HALIDE LIGHT FIXTURES W/HUBBELL MIC-GS-2 GLARE SHIELD (or comparable new/replacement fixture).
- B** EXISTING 12' POLE WITH:
 - 1 @ 100 WATT HIGH PRESSURE SODIUM LANTERN WITH LENSED PANELS (existing fixture).
- C** EXISTING 3' POLE WITH:
 - 3 @ 35 WATT COMPACT FLUORESCENT LAMP (CFL) WALKWAY LIGHTS (existing fixture).
- D** EXISTING WALL MOUNTED FLOODLIGHTS.
 - 2 @ SWIVEL LAMPHOLDER WITH 90 WATT PAR FLOODLIGHT MOUNTED ON BUILDING (to be removed).
- E** EXISTING 12' POLE WITH:
 - 1 @ HUBBELL 309-ML BULLET LAMPHOLDER FLOOD LIGHT W/1338 LOUVER AIMED TOWARD PROPERTY LINE (or comparable new/replacement fixture).
 - 3 @ SWIVEL LAMPHOLDER WITH 90 WATT PAR FLOODLIGHT AIMED AT POOL DECK (existing fixture).
- F** EXISTING 12' POLE WITH:
 - 1 @ HUBBELL 309-ML BULLET LAMPHOLDER FLOOD LIGHT W/1338 LOUVER AIMED TOWARD PROPERTY LINE (or comparable new/replacement fixture).
 - 3 @ SWIVEL LAMPHOLDER WITH 90 WATT PAR FLOODLIGHT AIMED AT POOL DECK (existing fixture).
- G** EXISTING 12' POLE WITH:
 - 1 @ HUBBELL 309-ML BULLET LAMPHOLDER FLOOD LIGHT W/1338 LOUVER AIMED TOWARD PROPERTY LINE (or comparable new/replacement fixture).
 - 3 @ SWIVEL LAMPHOLDER WITH 90 WATT PAR FLOODLIGHT AIMED AT POOL DECK (existing fixture).
- H** EXISTING ROOF MOUNTED LIGHT:
 - 1 @ 100 WATT HIGH PRESSURE SODIUM LANTERN WITH LENSED PANELS (existing fixture; to be removed if wooden shade structure removed).
- I** EXISTING ROOF MOUNTED LIGHT:
 - 1 @ 100 WATT HIGH PRESSURE SODIUM LANTERN WITH LENSED PANELS (existing fixture; to be removed if wooden shade structure removed).
- J** EXISTING 12' POLE WITH:
 - 1 @ 32 WATT FLUORESCENT PHILLIPS GARDCO 111-MT-32TRF-UNIV-NP MINI SCONCE MEDIUM THROW LAMP (or comparable new/replacement fixture).

PARKING CALCULATION

POOL AREA	AREA	SQUARE FOOT PER BATHER	NUMBER OF BATHERS
TOT POOL	313 s.f.	12*	26
POOL LESS THAN 5' DEEP	4,454 s.f.	12*	371
POOL MORE THAN 5' DEEP	625 s.f.	20**	31
TOTAL NUMBER OF BATHERS			<u>428</u>

PARKING REQUIREMENTS*** : 1 PARKING SPACE PER 7 BATHERS.

REQUIRED PARKING: 428 BATHERS/7 BATHERS PER PARKING SPACE = 62
 PARKING SPACES (MINIMUM OF 3 HANDICAP ACCESSIBLE).

PROVIDED PARKING: 61 + 3 HANDICAP ACCESSIBLE = 64 PARKING SPACES.

* Code of Maryland Regulations 10.17.01.19 User Load.

** Executive Regulation 61-91.

*** Montgomery County Zoning Ordinance - Sec. 59-E-3.7. Schedule of requirements.

Typical parking space dimensions shown per Montgomery County Zoning
 Section 59-E-2.22 and COMAR 05.02.02.

The proposed changes to the site plan include the addition of appropriate fencing to correct prior deficiencies, a new pedestrian walkway, new lighting to reduce glare into the neighborhood, movement of an outdoor vending machine into the pool house, and eventually replacement of the shade structures on the southern part of the site with shade umbrellas. The new plantings proposed for the site are shown on the revised landscape plan (Exhibit 76(h)), which will be discussed in Part II.C.3 of this report.

The proposed pedestrian walkway, the movement of the vending machine and eventual replacement of the shade structures were explained at the hearing (Tr. 94-96; 237-240) and are not controversial. Problems with the existing fence (height, location and gaps) were issues in last year's hearing on this case and were discussed in Mr. Sadoff's March 7, 2011 filing in this case (Exhibit 25, pp. 7, 31-38 and 43), but with the corrections now proposed by Petitioner, they no longer appear to be major issues. Technical Staff noted the following on the fence issues (Exhibit 45, 7):

Additionally, the 1963 BOA approval required wooden fencing along the boundaries of the site instead of the chain link fence that currently exists. The applicant is requesting that the existing chain link fence along the western, southern, and eastern boundaries of the property be allowed to remain. Staff believes that removal of the chain link fence would result in removal of mature vegetation that currently exists along the chain link fence. The mature vegetation serves as an effective screen of pool facilities. Additionally, there is a significant number of mature trees along the east side of the property that mitigates the need for a wooden fence.

Petitioner addressed the fence issues by repairing and relocating the fence as necessary to meet all requirements. Sara O'Neil-Manion, an expert in architecture and site design, introduced a copy of a landscape plan with highlighting illustrating where modifications to the fence were made (Exhibit 62). Tr. 87-93. Barbara Ship, the President of Tilden Woods Recreation Association, testified that holes and height issues with the fence have been corrected (Tr. 234-235), and Jack Mohr of the County's Health and Human Services Department sent an e-mail (Exhibit 73) indicating that COMAR requirements have been met. There was no contrary evidence introduced.

Although Ms. Keller stated at the hearing that she would appreciate further consideration for substantial screening and for solid fencing, and not trees that lose their leaves (Tr. 283), the Hearing Examiner finds, based on this record, that issues regarding the fencing around the property have been satisfactorily resolved. We therefore now turn to two areas which have been major concerns in this case, lighting and landscaping.

2. Lighting:

Lighting in residential zones is governed by Zoning Ordinance §59-G-1.23(h), which provides:

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

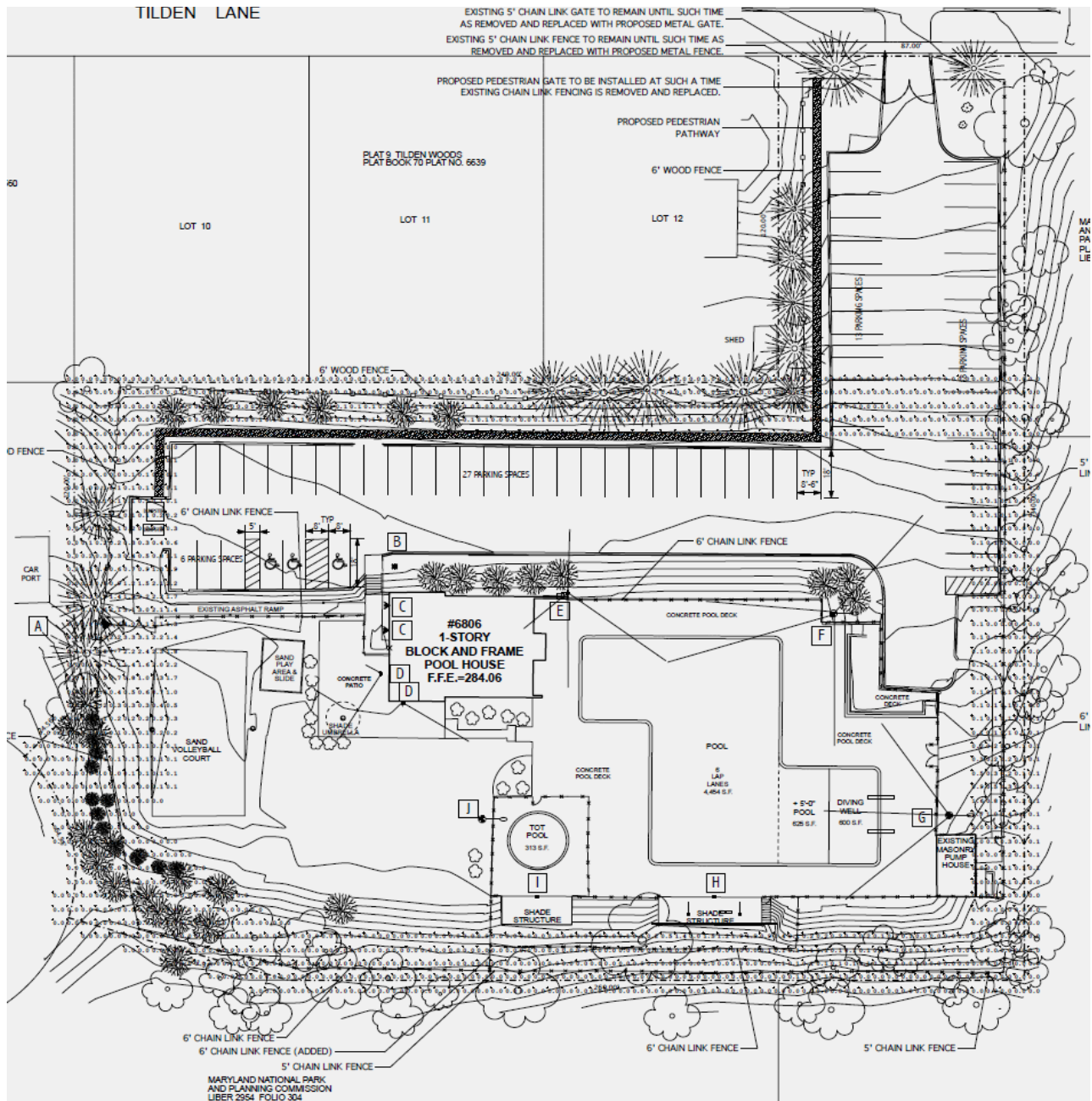
(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Petitioner has proposed numerous changes to its lighting to address concerns about glare raised by Petitioner's neighbor the southwest, B. J. Sadoff and Suzanne Keller. These changes are set forth both on the revised site plan (Exhibit 76(f)) and on the Lighting Plan (Exhibit 76(g)), which includes a photometric study demonstrating that the new light fixtures proposed will meet the statutory standard of not exceeding 0.1 footcandles at the rear and side property lines, as shown on the next page of this report. Cut sheets for the new fixtures were provided as Exhibit 66.

The only expert to testify with regard to lighting was John Coventry, who was called by Petitioner. In Mr. Coventry's opinion, the lighting plan proposed by applicant will locate and shield all outdoor lighting so that no direct light will intrude into any adjacent residential property, and the proposed replacement fixtures include glare and spill light control devices to minimize glare or light

trespass onto adjacent properties. Moreover, the predicted footcandles will meet the Zoning Ordinance requirement of less than 0.1 footcandles along the side and rear lot lines. Tr. 131-132.

This is demonstrated in Exhibit 76(g):



The “light fixture legend” is the same as shown on the revised site plan, reproduced on page 17 of this report.

On cross-examination by Mr. Sadoff, Mr. Coventry indicated that the new fixtures were designed to eliminate the glare problem reflected in CBA-1383, Exhibit 46(j).⁷ Tr. 134-137.

Technical Staff confirmed that the proposed lighting would not exceed permitted levels (Exhibit 45, p. 13), and no contrary evidence was introduced in this case. In fact, Suzanne Keller, one of the lead opponents in this case, stated in her final submission, “I am in agreement with the proposed lighting plan . . .” Exhibit 82, p. 4.

Given this record, the Hearing Examiner finds that the proposed new lighting and its design for the site are appropriate and consistent with statutory requirements.

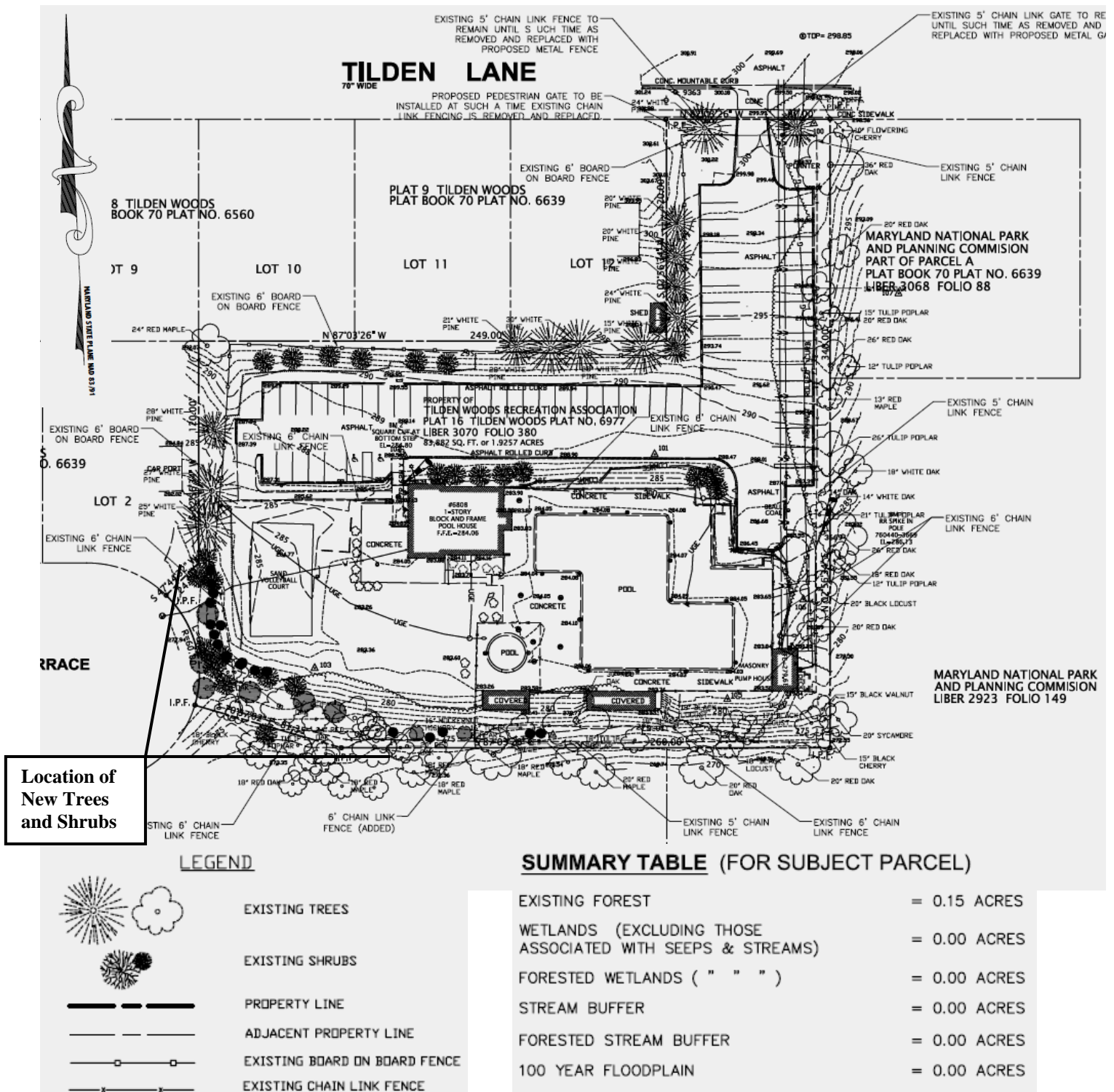
3. Landscaping:



Petitioner’s proposed landscape changes are designed to meet the complaints of Mr. Sadoff and Ms. Keller that the screening in the southwest corner of the subject site is inadequate to screen the noise, lights and activity of the swimming pool from their residence on Stonewood Terrace, especially in the winter. This problem is evidenced by a photograph produced by Mr. Sadoff, and marked at the hearing as Exhibit 68. The view is toward the northeast, from his property.



⁷ CBA-1383, Exhibit 46(j) is an exhibit admitted during the 2010 hearing, prior to the full modification petition.

This photo shows that the pool house is clearly visible from Mr. Sadoff's property during the winter. To remedy this problem, Petitioner proposes six additional evergreen trees and two large evergreen shrubs, as evidenced by the landscape plan (Exhibit 76(h)), revised on the recommendation of the Planning Board, following its review (Exhibit 58):



PLANT SCHEDULE					
TREES	CODE	QTY	BOTANICAL NAME / COMMON NAME	CONT	SIZE
	ET	6	EVERGREEN TREE	B & B	5'-6'
SHRUBS	CODE	QTY	BOTANICAL NAME / COMMON NAME	CONT	
	LS	2	LARGE SHRUB	3 GAL	
<p>*NOTES:</p> <ol style="list-style-type: none"> 1. ALTERNATES FOR "EVERGREEN TREES" INCLUDE: JUNIPERUS VIRGINIANA, ILEX OPACA, AND MAGNOLIA GRANDIFLORA 2. ALTERNATES FOR "LARGE SHRUBS" INCLUDE: VIBURNUM RHYTIDOPHYLLUM, PHOTINIA X FRASERI, LIGUSTRUM LUCIDUM, ILEX GLABRA, MYRICA PENNSYLVANICA, CORNUS SERICEA, AND ILEX VERTICILLATA 3. ADJUST PLANTING LOCATIONS AS NECESSARY TO PRESERVE EXISTING TREES. COORDINATE ADJUSTMENTS WITH M-NCPPC OR DPS INSPECTOR 					

To explain the selection of plant material to provide the required screening, Petitioner relied upon Gregory J. Osband, who testified as an expert in landscape architecture. He discussed the current landscape screening on the site and his proposal to add six new evergreen trees and two large evergreen shrubs to provide additional screening on the southwest corner to address any deficiencies in screening the site from the property on the cul-de-sac at 6804 Stonewood Terrace (*i.e.*, the Sadoff/Keller residence). Four of the new trees would be interspersed with the existing trees. They would be planted near the bottom of the hill that slopes up towards the lawn and the sand volleyball court. Two more trees would be planted along the northern edge of the other trees at the corner of the property at Stonewood Terrace. The additional shrubs will fill in where there are gaps in the existing shrubs, to provide additional screening. Tr. 142-144.

Mr. Osband recommended planting American Holly Trees because other varieties are susceptible to disease or being eaten by deer. He also recommended trees five to six feet in height, rather than the seven to eight foot height that had been initially recommended because a tree that is larger when planted does not grow as well. The smaller tree will adapt and in less than five years, will overtake, outlive and be much healthier than the larger trees. Tr. 149-150. The downside to planting the smaller trees, as Mr. Osband admitted on cross-examination, is that it would take three to

five years for the proposed trees to grow tall enough to fully screen the bathhouse. Tr. 185. Ms. Keller pointed out that she wants to be alive to benefit from the screening. Exhibit 82, p. 4. In an effort to provide adequate screening now, while allowing the trees time to adapt, the Hearing Examiner recommends six to seven foot trees to start out.

Mr. Osband reviewed proposals for plantings by Mr. Sadoff and suggested that his proposals would not work because those proposed plantings would either lose lower branches as they age (*e.g.*, white pine) or be eaten by deer (*Arborvitae*) or be broken by snowfalls from which they do not recover well. Moreover, any type of solid planting row would be inconsistent with the existing forest and would “stick out like a sore thumb because it's not compatible.” Tr. 153-160. He introduced photos to support his testimony - Exhibits 70(a), (b) and (c).

In Mr. Osband’s professional opinion, Petitioner's revised landscape plan complies with the screening requirements of Section 59-G-2.56(c) which requires a wall, fence or shrubbery to substantially screen the pool from view of the nearest property of such residential zone. Tr. 163. Mr. Osband summarized his testimony in a letter to Technical Staff (Exhibit 78), and attached a photo simulation of the proposed plantings, showing projected growth at 3-5 years and at 8-10 years:



Proposed Evergreen Trees and Shrubs
(Trees shown at 3-5 Years of Growth and 8-10 Years of Growth)

Technical Staff responded with a Supplemental Report (Exhibit 80), recommending approval of the revised landscape plan:

Staff has reviewed the revised landscape plan that shows six (6) new trees and two (2) new large shrubs located in the southwest corner of the property and finds that the landscape plan satisfies . . . [the Planning Board's conditions]. Additionally, staff finds the rationale of the revised landscape plan and the attached supporting documents, submitted on May 24, 2011, to provide sufficient screening for the following reasons:

- Given the constraint of existing mature trees, new trees would not thrive if planted too closely to each other or the existing trees. In addition, new species must be shade tolerant to survive in an area with existing trees.
- Given that evergreens tend to thin at the bottom, planting at the top of the southwest slope would not provide the most effective screen. Furthermore, any planting at the top of the slope would be a safety hazard because of its proximity to fields of play.
- The exhibit showing the range of growth 3-5 years and 8-10 years displays sufficient screening for winter months.
- Of the three "alternate" evergreen trees, staff finds the American Holly to be an excellent choice.
- With regard to the proposed large shrubs, staff finds the Viburnum rhytidophyllum and the Ligustrum lucidum to be excellent choices.

Therefore, staff recommends approval of all components of the revised landscape plan.

Based on this record, the Hearing Examiner finds that the final proposed landscape plan will appropriately address the screening needs for the subject site, by providing ". . . a wall, fence or shrubbery . . . so as to substantially screen such pool from view from the nearest property of such land in a residential zone," as required by Zoning Ordinance §59-G-2.56(c). However, even Mr. Osband admitted that trees planted at a height of 5 to 6 feet will take three to five years to provide full screening. The Hearing Examiner therefore recommends that the trees be six to seven feet tall at planting, to provide screening faster, even though that may create some disadvantage in terms of long-term growth according to Mr. Osband's testimony. This compromise will give Mr. Sadoff and Ms. Keller some relief without having to wait years.

In addition to requiring adherence to the approved landscaping plan, the Hearing Examiner recommends a modified version of a condition requested by Mr. Sadoff (Exhibit 25, p. 7) calling for proper maintenance of the grounds and removal of landscaping and lawn waste from the property. It also prohibits depositing such waste in the adjoining park or properties. Mr. Sadoff proposed other conditions regarding landscaping (Exhibit 25, p. 7), but produced no expert evidence to counter the testimony of Petitioner's landscape expert (Tr. 142-185), endorsed by Technical Staff (Exhibit 80), that the additional landscaping proposed by Petitioner would provide the needed screening.

4. Operations:

The real crux of this case is the dispute over operations, for it is the activity on the subject site, and its accompanying noise, traffic and parking, that create the adverse conditions for the immediate neighbors that are the most difficult to reconcile. On the one hand, Tilden Woods is clearly an active and even vibrant community asset, providing wonderful opportunities for social interaction in the community, as evidenced by the testimony of three young participants. Tr. 202-220. On the other hand, all this activity is not without a cost to the immediate neighbors' ability to enjoy some quiet time in their homes. Peaceful enjoyment of one's home is also a community asset.

There is no perfect solution to this controversy. Every limit on activities at the site reduces, to some extent, the benefit Petitioner offers to its members, and every limit omitted reduces the immediate neighbors' peaceful enjoyment of their homes. However, the stages of this review, including proposals for activity limits incorporated into a Statement of Operations and a Transportation Management Plan (TMP); commentary by the neighbors and other witnesses at the hearing; and input from the Technical Staff and the Planning Board, all help us to evaluate the competing interests and arrive at a solution which will preserve Tilden Woods Pool as a community asset while reducing its adverse impacts on the immediate neighbors.

In this part of the report, we will summarize, in general, what Petitioner has proposed for operations, in its preferred Alternative A version of the Statement of Operations and in the TMP. The Opposition's reaction to these operational proposals will be discussed in Part II. D. of this report.

Petitioner indicated its agreement with all of the modifications to the Statement of Operations recommended by the Planning Board, except with regard to the hours of the swim team "lock-in"⁸ and the hosting of a 5K run. Tr. 223-231; Tr. 258. The versions of the Statement of Operations and the TMP that the Hearing Examiner recommends be approved by the Board of Appeals are attached to this report as Appendix A and Appendix B, respectively. The Hearing Examiner has made a number of changes to those documents reflecting suggestions made by the opposition and the evidence of record. However, this part of the report mostly reflects operations as requested by Petitioner:

a. Membership and Staffing:

The membership of the community swimming pool is limited to 350 families and a maximum of 12 employees on the site at any one time. Petitioner defines an individual membership as half of a family membership. Exhibit 45, p. 4. Issues about membership and who may legitimately access the pool are discussed in Part II. D. of this report

b. Dates of Operation:

The community swimming pool operating season may begin no earlier than on May 1st and must end no later than on September 30th in any given calendar year.⁹

⁸ The "lock-in" has, in past years, been an all-night event. Technical Staff recommended that it be required to end at 11 p.m. Exhibit 45, p. 2, ¶6.d. The Planning Board crossed out that limitation from the recommended conditions (Exhibit 58, p.3), but did not endorse it as an overnight activity. Instead, the Planning Board recommended that the Hearing Examiner and the Board of Appeals consider denominating the lock-in as one of the six permitted late night (*i.e.*, up to 11 p.m.) activities. The Planning Board recommended against permitting the 5K run because it "has no relationship to the existing and expected activities of a community swimming pool." Exhibit 58, p. 1.

⁹ The Opposition would limit the dates of operation to the period from Memorial Day to Labor Day.

c. Hours of Operation:

Petitioner requests that Hours of Operation be limited to:¹⁰

- a. Sunday – 11:00 a.m. to 9:00 p.m. and 9:00 a.m. to 9:00 p.m. Monday-Saturday. Six late nights of operation are permitted until 11:00 p.m.
- b. Early Morning Lap Swim for members of the pool only, Monday through Friday 6:30 a.m. to 8:00 a.m., and must be restricted to no more than 25 members.
- c. Swim Team Weekday practice must begin no earlier than 8:30 a.m.
- d. Swim Team early morning Advanced Swimmer warm-up for up to a maximum of 25 swimmers on a maximum of six (6) Saturdays, from 6:30 a.m. to 7:30 a.m., during the Swim Meet season.
- e. One of the six late nights may be devoted to the annual all-night “lock-in.” On that one night, the pool hours would be extended from 11:00 p.m. to 6:30 a.m., the following day.

d. Swim Meets Permitted at the Pool:

Petitioner requests permission to Host Swim Meets at the Pool limited to:¹¹

- a. The maximum number of swim meets conducted at the site during the swim meet season must be limited to a maximum of nine (9). A maximum of five meets (5) may occur on Saturdays, and a maximum of four (4) may occur on weekday evenings, within the approved hours of operation. In the event of a weather related delay, nothing in this condition is intended to preclude a scheduled meet from being re-scheduled or continued to a following day within the approved hours of operation.
- b. Except as provided above, general warm-ups for swimmers during Swim Meet season must begin no earlier than 7:30 a.m. on Saturdays.
- c. Petitioner may host a Time Meet on one (1) Saturday per the meet season within the approved hours of operation and a Mini-Meet on a weekday within the approved hours of operation.

e. Non-Swim Meet Organized Activities:

Petitioner has traditionally hosted a number of events for members and guests which it characterizes as “organized events.” These include Family Gathering Events, Adult Parties, Member

¹⁰ Both the early morning workouts and the overnight “lock-in” are opposed by the neighbors, as will be discussed later. It should be noted that the hours recommended by the Hearing Examiner differ somewhat from those listed above.

¹¹ The Opposition argues that divisional and multi-team meets should not be hosted at the pool because they involve non-members and bring in too much traffic and commotion given the size of the pool. Exhibit 81, p. 3. Technical Staff agreed. Exhibit 45, p. 6. The change would reduce the number of total meets from 9 to 8 and Saturday meets from 5 to 4.

Birthday Parties, Neighborhood Events and a Sports Tournament. It seeks to add a 5K run. The total number of organized events must not exceed ten (10) during the operation season and must avoid overlap with any swim meets. Petitioner requests permission to host no more than two (2) organized group activities, including swim team activities or social events, between Labor Day and the end of October (*i.e.*, after the operating season is over), and to provide the service of food and the service of alcohol, with appropriate County permits, at some of the 10 organized events.

f. Other Events/Activities:

Petitioner also hosts other activities which it characterizes as “user incentives or amenities” These include “Grill and Chill” Dinners by the Pool Night, Small group birthday “swim and cake” celebrations (less than 25 attendees), Bring Your Own Raft Night, “Age Specific” Evenings at the Pool (e.g. high school kids, middle school kids), Friday Afternoon Socials for New Members, Friday Pre-Swim Meet - Swim Team Gatherings, Evening Playing Card Gatherings and Ice Cream/Carmen’s Italian Ice Night at the Pool.

g. Noise Control:

All operations must conform to the requirements of the Montgomery County Noise Control Ordinance (Chapter 31B of the County Code). Specifically, noise levels cannot exceed 65 dBA at the property line during daytime hours, and cannot exceed 55 dBA at the property line during nighttime hours. Daytime is defined as the hours between 7:00 a.m. to 9:00 p.m. weekdays and between 9:00 a.m. and 9:00 p.m. on weekends and holidays; nighttime is between 9:00 p.m. to 7:00 a.m. weekdays and between 9:00 p.m. and 9:00 a.m. weekends and holidays.

There must be no amplified noise¹² permitted before 9:00 a.m. or after 9:00 p.m. on the pool property except that the use of a standard swim meet starting system with a “buzzer” or “tone” in

¹² The issue of what constitutes “amplified noise” will be discussed in Part II. D. of this report. Petitioner would define it as “music/sound played through loudspeakers, portable or otherwise, or similar type of public address system.” Exhibit 76(c), p. 19. Petitioner does not include small CD players and the like within this category, but the Opposition does.

compliance with the Montgomery County Noise Ordinance is permitted to regulate swim meets. At no time will loudspeakers be used to play music during swim meets or any other occasion. During the 10 organized events, Petitioner seeks permission to play music with a usual and conventional home reproduction system like a little CD player or some self-contained music system. If Petitioner plays music on these home reproduction systems, it would be at a volume during which people would be able to carry on normal conversation. Exhibit 76(c), p. 21. Tr. 246-248.

The use of non-amplified acoustic instruments to play only the National Anthem at the start of a swim meet would be allowed.

h. Lighting Control:

All lighting must be located, shielded and maintained so that no direct light or glare or reflection intrudes into adjacent and nearby residential properties. All internal and external lights must be turned off within 30 minutes of closing.

i. Parking and Transportation Management Plan:

Timing and location of parking is described in the Statement of Operations (Exhibit 76(c), pp. 21-22) and provisions for managing parking at larger events and swim meets are contained in the TMP. The Transportation Management Plan is intended to help mitigate traffic and on-street parking impacts on adjacent the streets generated by certain Pool activities. During swim meets and other large events, Petitioner will station a Parking Attendant at the driveway entrance to ensure that traffic flows smoothly and safely and to monitor and direct on-street parking such that vehicles are not parked illegally and residential driveways are not blocked. Pick-up/drop-off points will be repositioned deeper within the site parking lot to prevent queuing at the entrance and orange traffic cones will be placed along the south side of Tilden Lane to prevent parking of cars within 15 feet of either side of the entrance drive. Petitioner will provide alternative off-street parking areas for

potential overflow parking; close the pool grounds to general membership during meets; and communicate parking controls to visiting swim teams.

j. Community Liaison Council:

Petitioner will create a Community Liaison Council (CLC) to discuss and address operating impacts and other issues of concern to the applicant and/or the community. The CLC shall consist of the applicant, the applicant's representative and representatives from any civic association or homeowner association within the defined neighborhood wishing to participate.¹³ Meetings must be held three times a year to be scheduled as follows: a meeting before the start of the operating season, a meeting during the operating season, and a meeting after the end of the operating season. Meeting minutes must be kept by the applicant and filed with the Board of Appeals (BOA) on an annual basis.

k. Other Operational Controls:

The following additional operational controls, which appear to be non-controversial, are recommended by the Hearing Examiner, partly based on suggestions from the opposition:

Petitioner must plant and maintain the landscaping and fencing required by the approved landscape plan (Exhibit 76(h)), except that the six new trees should be planted at an initial height of six to seven feet, rather than five to six feet as stated in the Landscape Plan. The grounds of the property must be properly maintained throughout the year. This includes removal of landscaping and lawn waste from the property, which must not be deposited in the adjoining park or properties.

Petitioner must comply with the specifications of the Special Exception Site Plan (Exhibit 76(f) and the Lighting Plan (Exhibit 76(g)). Petitioner must also comply with the terms of its Statement of Operations (Appendix A) and Transportation Management Plan (Appendix B), but the conditions specified in the Board's resolution control in the event of any conflict. The Statement of

¹³ At the suggestion of the Opposition, the Hearing Examiner recommends broadening the permitted participants to include any resident of the defined neighborhood wishing to participate. A proposed condition so specifies. Added features also include a contact person for neighbors and a requirement for more reportage to the Board.

Operations (Appendix A) and the TMP (Appendix B) contain the provisions as finally recommended by the Hearing Examiner, without the redlining contained in Petitioner's submissions. If the Board wishes instead to adopt versions submitted by Petitioner, they are in the record as Exhibit 76(b), (c) and (d), or if the Board wishes to adopt Mr. Sadoff's proposals, they are in the record as Exhibits 81(b) and (d).

D. The Concerns of the Neighbors

As mentioned at the beginning of this report, some of the immediate neighbors oppose aspects of the modification petition, but there is significant support from the community for many of the activities run by the Tilden Woods pool. It should be recognized that any community swimming pool will inherently have both visual and operational impacts upon the community, especially the abutting neighbors. Moreover, although community swimming pools have some negative impacts upon the community (*i.e.*, view, activity, noise, traffic and parking), they also have many positive impacts for the community at large (*i.e.*, providing a location for healthful athletic, recreational and social activities). Thus, any effort to establish physical and operational conditions for a community swimming pool is, of necessity, a balancing act – an effort to balance the community benefits of a structure or activity against the impacts that they will impose upon the immediate neighbors.

The concerns raised by the neighbors regarding landscaping, fencing and lighting were addressed in Part II. C. of this report. This section will address the neighbors' operational concerns.

Operational Concerns of the Neighbors:

B. J. Sadoff and Suzanne Keller, whose home on Stonewood Terrace is close to the southwestern corner of the subject site, have led the opposition. They were joined by Donald and Ruth Evans, who live on Tilden Lane, directly across from the entrance to the subject site. Mr. Sadoff and Ms. Keller have been most affected by the lights, noise and activity at the site (Exhibits 25-28), while

the Evans have been most affected by traffic and spillover parking on Tilden Lane (Exhibit 23). One other adjacent neighbor, Heidi Unkle, who lives just north of the subject site, wrote to complain about upkeep of the wooden fence abutting her property. Exhibit 31. The hearing yielded testimony, both pro and con, and that testimony is summarized in Part III of this report. The significant concerns raised by the opposition neighbors regarding operations at the Pool are listed and discussed below:

1. Members and their Guests
2. Dates of Operation
3. Hours of Operation
4. Swim Meets Permitted at the Pool
5. Non-Swim Meet Activities, including the Overnight “Lock-in”
6. The Proposed 5K Run
7. Traffic and parking during special events
8. Noise Control

1. Members and Their Guests:

The Opposition raised a number of issues regarding membership and usage of the pool. The first challenges the pool membership of 350 families. That is the number of family memberships permitted by the Board’s original resolution granting the special exception in 1963, and Petitioner has not sought to raise this number in its modification petition; however, it does define an individual membership as half of a family membership, in its Statement of Operations.¹⁴ Exhibit 76(c), p. 2. Mr. Sadoff argues that Petitioner’s interpretation of single memberships to be half of a family membership operates as a proposed modification of the membership conditions, thus placing the

¹⁴ Mr. Sadoff asserts that the formula of a single membership being considered half of a family membership is a violation of COMCOR § 51.00.01.04A, which uses a formula to design the size of a pool. Contrary to Mr. Sadoff’s assertion, nothing in that section determines how the terms “family member” and “individual member” in a pool association should be defined. Mr. Sadoff appears to be conflating pool capacity with membership. While family membership may be a guide to designing the capacity of a pool, it is not necessarily correlate precisely with appropriate pool capacity, as the provision makes clear. The Hearing Examiner finds Petitioner’s definition of single membership to be a reasonable interpretation of the phrase “[a] membership of 350 families” in the Board’s authorizing resolution, since most families would logically involve more than one pool user.

issue before the Board in this review. Exhibit 81, p. 2.

While one could argue that membership is not properly a part of this review since the single-membership definition could well be viewed as an interpretation rather than a proposed change, the Hearing Examiner will briefly address Mr. Sadoff's point, which questions the currently authorized membership based on the pool's rated capacity and his interpretation of County regulations.

Mr. Sadoff urges a limitation of the pool membership to 322 family memberships, consistent with his interpretation of COMCOR § 51.00.01.04A, which regulates the "Sizing of Pools" in Montgomery County. He argues that because the pool has a capacity of 428, and the regulation specifies that a community swimming pool should be designed to have a capacity of 1.33 times the stated family membership, the family membership should be 322 (*i.e.*, $428 / 1.33$). Ex. 25, p. 44-45.

Mr. Sadoff suggests that to allow the Petitioner to continue with the membership of 350 family members would be contrary to 59-A-4.126 of the Zoning Ordinance, which provides a limitation on the Board of Appeals by specifying that nothing in the Zoning Ordinance authorizes the Board to validate, ratify or legalize any violation of law or regulation. Tr. 300-301.

Petitioner responded to this argument at the hearing, arguing that COMCOR § 51.00.01.04A was put in place as a design mechanism to anticipate the likely volume of use on any particular day that a pool would need to accommodate. According to Petitioner, it is used by the County to help regulate, design and approve plans for when swimming pools are proposed to be constructed. Once constructed, the pool capacity is set. It is based on the surface area, and at any given time, no more than the approved number of persons can be in that pool. After a pool has been constructed, the use of that ratio and formula is no longer relevant. Tr. 301-303.

The Hearing Examiner agrees with Petitioner's interpretation of the regulation in question.

COMCOR § 51.00.01.04 is entitled “Sizing of Pools,” not “Limits on Membership.” By its own terms, it is intended to determine the appropriate size of the pool based on “expected bather population.” It uses the 1.33 formula to better estimate pool population, not to be used retroactively to reduce the number of people allowed to be members in a community swimming pool. Moreover, it expressly provides that the formula may be varied if there is “competent evidence” to justify it. Once the pool has been constructed, the limitation is on the number of bathers permitted at any one time, not on the number of members in the pool association. There is no evidence in this case that Petitioner has exceeded the number of bather permitted in the pool at any one time, which is 428.

Mr. Sadoff also argues that, by hosting large events with non-members invited by Petitioner, itself, and not by individual members as their guests, Petitioner is violating Zoning Ordinance §59-A-2.1.¹⁵ That section defines a Community Swimming Pool as:

A swimming pool or wading pool, including buildings necessary or incidental thereto, operated by members of more than 10 families for the benefit of such group and not open to the general public, whether incorporated or unincorporated, whether organized as a club or cooperative or association; provided, that it is not organized for profit and that the right to use such pool is restricted to such families and their guests.

Mr. Sadoff argues that this definition prevents Petitioner from hosting events that are open to people other than members and their individually invited guests. Exhibit 25, p. 46. He points out that the Zoning Ordinance definition of a community swimming pool is to be contrasted with the definition of a private club which contains no similar restriction on use. Private clubs authorized under §59-G-2.42 do not enjoy the exclusion from the general conditions requirements of G-1.21(a) that is provided for community swimming pools. He therefore urges that the Petitioner should not be permitted to expand its operations by comparison to activities allowed by private clubs, while also seeking the protections of §59-G-2.56 as a community swimming pool. Tr. 297.

¹⁵ Mr. Sadoff also argues that Petitioner is violating its own published policy on admission of guests, but based on the testimony produced by Petitioner at the hearing, it is clear to the Hearing Examiner that Petitioner did not intend by any such internal policy to limit its own invitation of guests to Pool events.

Petitioner contends that the organization itself can invite members of the public as guests to events, such as the adult parties, in order to sustain membership.

In the opinion of DPS's Zoning Manager, Susan Scala-Demby, the statutory language limiting admission to families, members and their guests does not prevent a pool from opening up to the community to see what goes on at the pool and perhaps join if the pool is looking for membership, but it should not be a "regular practice," and she "would feel more comfortable if individuals invited members than the pool." Tr. 54, 61.

The Hearing Examiner concludes that Petitioner has interpreted its prerogatives in this regard too broadly and Mr. Sadoff too narrowly. The definition should not be interpreted as a straight jacket that prevents the organization from ever conducting a public activity that will boost membership to permitted levels; however, it is not a license to generally allow attendance of non-members in a way that eviscerates the intended limits of the Code provision.

The best way to address this issue is to require Petitioner to specify events in its Statement of Operations that would permit somewhat broader attendance and to require a TMP to manage traffic and parking at larger events. The Board can then review these proposed events and determine whether they would impose an undue burden on the community. Petitioner would then be permitted to conduct only those events permitted in its approved Statement of Operations. That is precisely what is being done in this case at this juncture.

2. Dates of Operation:

Another source of dispute in this case is Petitioner's proposal to expand its current operating season. The opposition understandably opposes having an expanded season because it increases the number of days there will be commotion in their neighborhood. They wish the season to begin on

Memorial Day weekend and end on Labor Day weekend, which they consider the traditional dates of pool activity in the County. Tr. 292-294.

It should be noted that the 1963 resolution authorizing the special exception placed no limits on the pool's operating season. Nevertheless, Technical Staff recommended limiting the operating season to begin on Memorial Day weekend in May and end on Labor Day weekend in September. Exhibit 45, p. 1. The Planning Board disagreed, recommending that the operating season begin no earlier than May 1st and end no later than on September 30th in any given calendar year. Exhibit 58, p. 2. Even though Technical Staff recommended ending the "operating season" on Labor Day, it also recommended allowing "No more than two (2) organized group activities, including swim team activities or social events, [to] take place between Labor Day and the end of October." The Planning Board appears to have left that recommendation intact. The Opposition would not allow this post-operating season activity.

Petitioner produced testimony from two witnesses on the point, Bill Bullough and Susan Scala-Demby. Bill Bullough, who has been aquatics director for both the City of Rockville and the Montgomery County Recreation Department, among others, testified that the assumption that the operating season is Memorial Day to Labor Day is "folklore." Tr. 273. He stated that although the majority of pools may keep that season, they're not restricted to do that. He feels that the extended season does not cause a disturbance because those activities are usually minimal and quiet. Most of the people don't come out then. According to Mr. Bullough, more and more pools, particularly down-county, have added heaters and they might choose to open up in early May or mid-May and go into September to extend their season. Tr. 270-274.

Ms. Scala-Demby testified that because the Resolution in this case did not limit the season, the pool could be open all year around. She stated that, in a lot of pools, the season was Memorial

Day to Labor Day, or May to October, because sometimes September and October months are relatively warm. Tr. 52-53.

Based on this record, especially the absence of any operating season specified in the 1963 resolution granting the special exception, the Hearing Examiner recommends adopting the Planning Board's suggested limits on the operating season, May 1 to September 30, in any given year.

However, the operating season is when operations are permitted on the site, and except for security and maintenance, there should be no activity on the site before May 1 or after September 30, which would eliminate the post-operating season activity that was allowed in the Technical Staff report.

This still represents almost a two-month expansion of the permitted operating season.

3. Hours of Operation:

The requested hours of operation are spelled out on page 28 of this report. The major disagreements expressed by Mr. Sadoff and Ms. Keller regarding hours of operation pertain to the proposed overnight "lock-in" and the proposed early morning swims for advanced swim team members and lap swimmers. We turn now to the proposed early morning swims. The proposed lock-in will be discussed in another section of this report.

The early morning swims fall into two categories – early morning warm-ups for advanced swim team members before meets on six Saturdays and early morning swims for lap swimmers Monday through Friday. Technical Staff recommended allowing Saturday warm-ups no earlier than 7:30 a.m. and lap swimming, Monday through Friday, no earlier than 7:00 a.m. Exhibit 45, p. 2. The Planning Board recommended allowing advanced swimmer warm-ups before swim meets on up to six Saturdays as early as 6:30 a.m., and lap swimmers as early as 6:30 a.m. Monday through Friday.

There was a fair amount of testimony at the hearing establishing the need for early morning warm-ups by swim team members in order to avoid injury. Bill Bullough testified that there are

often too many participants to warm up in a half hour before a meet, so the early morning warm-up prevents people from getting hurt. He stated that early morning swims and early morning swim team practice in pools throughout the County are beginning to be standard practice. Tr. 272. A swim team member, Sidney Drill, testified that there are so many kids who swim at the meets that the pool is too crowded to effectively warm up then, and without a proper warm-up, a swimmer is much more prone to injury. Tr. 214-217. Ms. Drill also noted that the early morning warm-ups for the swim team are not loud. Another swim team member, Elena Spak, testified that there is a health reason for the warm-ups, and they are necessary for older swimmers to keep their muscles the way that they need to be to perform at a high level. Tr. 218-219.

However, there was little justification in the record for lap swimmers to be allowed to create activity at the site as early as 6:30 a.m. every weekday. Mrs. Ship, Petitioner's president, stated that starting the early lap swims as late as 7 a.m. might make them unusable by some people who had to get to work. Tr. 230-231.

Based on this record, the Hearing Examiner agrees with the Planning Board to allow early morning warm-ups for advanced swim team members on up to six Saturdays before meets to avoid injury; however, he agrees with Technical Staff on not permitting lap swimmers before 7:00 a.m. Monday through Friday, to minimize early morning activity that might disturb the immediate neighbors. The recommended condition on hours in Part V of this report reflects these conclusions.

4. Swim Meets Permitted at the Pool:

Mr. Sadoff argues strongly that swim teams and swim meets are not an inherent characteristic of Community Swimming Pools (Exhibit 25, pp. 47-52), although he admits that this conclusion should not require their prohibition. Rather they should be conditioned so as to avoid undue adverse effects on nearby properties.

Bill Bullough testified that swimming team participation and swim meets are part of the core function of community swimming pools, and the vast majority of the County's community swimming pools belong to swim leagues which foster such competition. Tr. 263-264.

The Hearing Examiner need not decide whether swim meets are inherent or non-inherent, since that standard is more significant in determining whether a special exception should be granted or denied. The special exception exists already, and whether swim meets are inherent or non-inherent in operating a community swimming pool, appropriate conditions may be imposed by the Board of Appeals, pursuant to its authority under Zoning Ordinance §59-G-1.22(a), to ameliorate their effects on the neighbors.

Clearly such activities are going to create some noise in the immediate neighborhood and involve participation of nonmembers at the site, but based on this record, the Hearing Examiner finds that swim meets are intrinsic to the operation of most community swimming pools. The Hearing Examiner finds no evidence that the Council in general, or the Board of Appeals in this case, intended to prohibit or severely limit swim meets at community swimming pools, even though, by their nature, they result in non-members participating. Such participation does not render this activity as open to the public.

This does not mean that swim meets, whether inherent or non-inherent, cannot be regulated by appropriate conditions to minimize disturbance to the neighborhood. Such conditions, including limits on hours and noise and a prohibition against hosting Divisional meets, have been recommended in this case. Permitted meets are specified in the conditions recommended in Part V of this report.

The prohibition against Petitioner hosting Divisional meets is based on the size of the facility, as reflected in the testimony of Ms. Ship, as well as the recommendation of Technical Staff. Ms.

Ship testified at the April 30, 2010 hearing (*i.e.*, the hearing on the Board's initial referral of this case to the Hearing Examiner) as follows (4/30/10 Tr. 100):

Just as an aside, there are other A meets. There are other meets that we would host, but we're sort of too small a pool like divisionals and relay, I mean, just some of the other things that go with the swim league. We're too small a pool. We know we don't have the parking and the facility to be able to host those meets. So, we don't offer to do it and we haven't hosted those meets in many, many years because we know that it would have a negative impact on the community.

Technical Staff stated, in its April 20, 2011, report (Exhibit 45, p. 6), "Staff does not support a Divisional Meet hosted by the swim club."

5. Non-Swim Meet Activities, including the Overnight "Lock-in":

As mentioned earlier, Petitioner has traditionally hosted a number of events for members and guests which it characterizes as "organized events." These include Family Gathering Events, Adult Parties, Member Birthday Parties, Neighborhood Events and a Sports Tournament. It seeks to add a 5K run and wants to restore its annual swim team "lock-in" to an all-night event. Petitioner also hosts numerous other activities which it characterizes as "user incentives or amenities," listed on page 29 of this report.

Petitioner agreed with the Planning Board's recommendation that the total number of "organized events" must not exceed ten (10) during the operation season and must avoid overlap with any swim meets. Petitioner requested permission to host no more than two (2) organized group activities, including swim team activities or social events, between Labor Day and the end of October (*i.e.*, after the operating season is over), but the Hearing Examiner recommends against allowing events to be hosted on the site after the end of the newly expanded operating season. Petitioner also requests permission to provide the service of food and the service of alcohol, with appropriate County permits, at some of the organized events. This issue is discussed below.

The Opposition does not oppose social events at the site, *per se*,¹⁶ but argues that they must be limited to members and guests invited by those individual members, and that noise must be properly controlled. Mr. Sadoff also argues that food and alcohol should not be permitted at these events because Petitioner did not timely request that food and alcohol service be permitted as a part of the Pool's activities. Exhibit 25, pp. 54-55 and 81, pp. 5-6.

The issue of who is an appropriate guest at a Pool activity was discussed in Part II.D.1. of this report. The Hearing Examiner concluded there that the definition of "guest" should not be as narrowly construed as suggested by Mr. Sadoff, but rather Petitioner should be required to reduce the impact of larger activities by employing a TMP, and that the Board could bar any activity which it felt would have an undue impact.

Noise control is discussed below in a separate sub-section, as is the issue of the 5K run. As to the service of food and alcohol, the Hearing Examiner disagrees with Mr. Sadoff. While it would have been better if Petitioner had included something in its proposed Statement of Operations before May 10, 2011, the fact is that the point was discussed at the hearing (Tr. 243-244) and the community was given ample opportunity to comment both at the hearing and thereafter, as Mr. Sadoff has done. Moreover, Mr. Sadoff was clearly aware of the practice, as he commented on it in his March 7, 2011 filing (Exhibit 25, pp. 54-55). Contrary to Mr. Sadoff's assertion in his June 3, 2011 filing, Technical Staff was given the opportunity to comment on the proposed food service/alcohol service language because it was provided with a copy of the alternative Statements of Operation filed on May 11, 2011. In fact, Staff stated in its Supplemental report of May 27, 2011 (Exhibit 80) that it "continues to support the Alternate B version of the Statement of Operations." Thus, the request to modify the proposed Statement of Operations to permit the properly licensed service of food and alcohol should

¹⁶ Mr. Sadoff's Appendix II (pp. 12-16) to his June 3, 2011 submission (Exhibit 81), which specifies his suggestions for the proposed Statement of Operations, leaves the events listings and descriptions essentially untouched.

not be barred as untimely. The Hearing Examiner also recommends that the Board of Appeals approve Petitioner's request to permit the properly licensed service of food and alcohol at the subject site, as specified in the proposed Statement of Operations, since there is no evidence that such service has been harmful to the community and since it will be properly licensed.

We turn now to the more difficult question of whether the annual swim team "lock-in" should be allowed as an all-night event. The "lock-in" has, in past years, been an all-night event. As previously noted, Technical Staff recommended that it be required to end at 11 p.m. Exhibit 45, p. 2, ¶6.d. The Planning Board crossed out that limitation from the recommended conditions (Exhibit 58, p.3), but did not endorse it as an overnight activity. Instead, the Planning Board recommended that the Hearing Examiner and the Board of Appeals consider denominating the lock-in as one of the six permitted late night (*i.e.*, up to 11 p.m.) activities.

Ms. Ship described the "lock-in" is a longstanding traditional activity at the pool. It has gone on for about 20 years, and except for the last couple of years, it has been an overnight event. Ms. Ship testified that it is one of the most memorable events and activities for the graduating seniors. It brings the whole team together at the end of the season and bonds them, with the older kids acting as mentors for the younger kids. Tr. 187-188.

Usually it will include some swimming in the pool, but typically the kids are out of the pool 9:30 to 10:00 p.m. There are art projects, making movies and different group activities. There's also a bonfire, approved by the fire marshal, with roasting marshmallows and hot dogs. The kids all get T-shirts and then usually by 11:00 p.m. or midnight, everything is winding down and the kids go to areas around the pool that they have staked out and they go to sleep or talk quietly and play cards. The event is very well chaperoned and supervised. Tr. 187-188.

Some of the kids leave before 11:00 p.m. and go home to sleep, but once 9:30-10:30 p.m. rolls around, the gates are actually locked, and that's where the name "lock-in" comes from. At 6:30 in the morning, the parents come by and pick up the kids and go home. Tr. 187-188.

Bill Bullough testified that fund-raisers, the lock-in event and swim team warm-ups are all typical and appropriate for community swimming pools. Tr. 264-266.

Three young swimmers, Anna Epstein, Sidney Drill and Elena Spak, testified to how important the "lock-in" was to them and to the community.

Anna Epstein testified that the sense of community and the close ties that she has formed with her teammates were developed through many swim team activities, particularly the annual lock-in.

I remember not being able to contain my excitement at the thought of a sleep-over at the pool with my whole team. Some of my happiest memories come from those nights whether it was making movies, dance routines or even pirate ships with my coaches and teammates. Although many years I ended up falling asleep earlier than I had intended, nevertheless, the lock-in weekend was always a highlight of my summer. [Tr. 205].

Ms. Epstein noted that although there are many events throughout the summer, the lock-in gives the community a chance for countless neighbors in the neighborhood to come together and, in spending the night together, be able to bond and learn about one another and see how a community and family should work. "I think the lock-in really is the best, it's a great way of doing that." Tr. 207-208.

Sidney Drill testified that the lock-in is probably the biggest time of the year for the little kids, who are looking up to the older kids to see what they do and how they act. They watch the older kids on the team sit down and tell them ghost stories or play cards or splash around in the pool doing relays and having good, clean fun. This "is huge" for the little kids on the team, and then when they grow up, they want to be good role models too. Tr. 210-211.

Elena Spak added that “the lock-in does mean a lot to a lot of people.” Tr. 219. The interaction with so many of her younger peers throughout this Tilden Woods experience led her into her favorite area of study – developmental psychology.

The Hearing Examiner asked the opposition witnesses if there were any conditions that would make an overnight lock-in acceptable to them. Mr. Sadoff responded in the negative. Tr. 303-304. Ms. Keller, however, stated noise was really the issue for her, and she indicated that there should be no amplified noise and no amplified music at all during the lock-in, and no diving board or volleyball after 9 p.m. Tr. 284-285.

Ms. Ship testified that there would be no amplified sound (*i.e.*, loudspeakers), but Petitioner is willing to agree to having no CD players and the like at this event. Petitioner will make sure the kids are out of the pool by a certain time and that when the kids are picked up in the morning, there is carpooling to minimize traffic to the pool. Children are picked up in the corner of the pool farthest away from the neighbors, and Petitioner would agree to whatever restrictions would be necessary to help the event happen. Tr. 187-189.

Ms. Epstein indicated that “CD players are completely unnecessary [at the lock-in].” Tr. 208. Ms. Drill testified that the lock-in is not that loud, especially at night because everybody is exhausted. By 11:00 p.m. or midnight, half the kids on the team are asleep. A bunch have left already because those 10 or under have to have a chaperone, and a lot of parents don't want to stay overnight. The older kids, while used to staying up later, are still exhausted, so generally, they just get into little corners and whisper to each other because everybody else is sleeping and they try to respect them. Tr. 209-211.

The Hearing Examiner admits to being torn on this issue. An all-night activity at the Pool may well be considered excessive to the immediate neighbors. On the other hand, the overwhelming

weight of the evidence establishes the beneficial effects of this annual event.

On balance, the Hearing Examiner concludes that the all-night lock-in should be permitted, but under strict conditions, mostly suggested by the parties – no amplified noise and no amplified music at all during the lock-in (*i.e.*, not even CD players); no diving board or volleyball after 9:00 p.m.; Children must be out of the pool by 10:00 p.m.; carpooling must be used to minimize traffic to the pool when the children are picked up in the morning; and pick-up must be in the corner of the site farthest away from the neighbors. The Hearing Examiner also recommends that the impacts of the year's lock-in be an annual topic at the mid-season meeting of the Community Liaison Council, with reference to it in the minutes filed with the Board, so that the Board can review whether Petitioner has kept adverse impacts to a minimum. The Board should retain jurisdiction and consider revocation of this permission if impacts become undue.

6. The Proposed 5K Run:

One of the most controversial additions to proposed the Statement of Operations is the annual Celine and Paul Silver 5K Run. It was proposed by Petitioner to help fund a scholarship commemorating two long-time members of the pool, Celine and Paul Silver, daughter and father, who were tragically killed in an auto accident in 2009. Petitioner got a written opinion from DPS that it would be okay to host the run (Exhibit 42(a)), so Petitioner began planning and submitted appropriate permit requests. When it became clear that it was too contentious an issue for Petitioner to host this year, Petitioner pulled it off the table for this year, and believes it will be hosted this year in the park adjacent to the pool. Tr. 22-23.

If permitted in future years, registration for the annual Celine and Paul Silver 5K Run probably would be on the grassy area of the pool. There would be a couple tables where people come to register and pick up their shirts and other handouts. It would begin at 9:00 a.m., and the run would

proceed through the neighborhood. The whole event would last two to three hours, from 9:00 to 11:00 or noon on a Saturday, so its would be conducted within hours currently approved. The pool will not be opened to general membership until the event is done. The event is going to be limited to 200 runners, and it would be locally advertised through LISTSERVs in the community and through the Walter Johnson High School Tr. 24-25.

The traffic would be controlled by either the County Police or the Park Police, depending on where the event is being held. Traffic would be allowed on at least half of each neighborhood street. The Luxmanor Elementary School or another school could be used for overflow parking. There is no plan to use any amplified starting equipment, entertainment or music as a part of the race. Tr. 167-173.

Both Technical Staff (Exhibit 45, p. 1) and the Planning Board (Exhibit 58) recommended against permitting the 5K run because, as the Planning Board stated, it “has no relationship to the existing and expected activities of a community swimming pool.” Exhibit 58, p. 1.

When asked by the Hearing Examiner what is the connection between a 5K run and a community swimming pool, other than the fact that the people after whom this was named were members of the club, Ms. Ship, Petitioner’s president, replied, “Well, I think the connection is the word community. We are a community. This is not a swimming event. This is a community event . . .” She added, in response to her attorney’s follow-up, that it is not related to swimming, but there are other non-swimming activities at the pool such as card playing, volleyball and eating dinner. Tr. 26-28.

DPS’s Zoning Manager, Susan Scala-Demby, also testified regarding the proposed 5K run. The Hearing Examiner initially questioned her about a letter, dated April 12, 2011 (Exhibit 42(a)), indicating her opinion that the plan for a 5K race at the community swimming pool in question was

appropriate under the special exception. The Hearing Examiner asked whether or not, in her mind, there has to be some relationship between the activities that are approved for a special exception and the nature of the special exception itself. Tr. 38.

Ms. Scala-Demby responded that while something totally unconnected would not be acceptable, she felt the run was acceptable because it was to honor two former pool members, and members of the family continue to belong to the pool. When pressed by the Hearing Examiner as to whether the nature of the activity has anything to do with what she would consider in approving it, Ms. Scala-Demby replied that because most of the activity would take place off site on the streets, she was “not sure that there has to be that connection.” Tr. 39-40. When asked whether an off-site activity would impose an even greater burden on the community, she responded that this was a once-a-year activity.

The Hearing Examiner strongly disagrees with Ms. Scala-Demby’s analysis.¹⁷ The mere fact that former or current members of the pool are being honored does not justify permitting an activity that has no logical connection with the kinds of activities normally expected at a community swimming pool. Otherwise, there is no logical limit on the kinds of activities that are permissible at any special exception. Moreover, the fact that the activities will be centered outside the site, in the surrounding neighborhood, makes them even more of an imposition on the community.

The Hearing Examiner also sees a clear distinction between activities such as card playing and volleyball, which might reasonably be expected as community swimming pool activities, and a 5K

¹⁷ Mr. Sadoff raised an interesting legal issue as to whether DPS has the authority, under Code §2-42B(a)2(A), to offer advisory opinions regarding whether a proposed activity is permissible under a special exception. Tr. 42-49; 297-300. The Hearing Examiner concludes that DPS does have that authority, as the initial enforcing arm for special exceptions, unless and until the Board of Appeals expresses a differing interpretation of the extent of the particular special exception grant. Code §2-42B(a)2(A) specifies that DPS is responsible for “administering, interpreting, and enforcing the zoning law and other land use laws and regulations,” except where those functions are assigned by law to another department or agency. If a complaint or a special exception modification request is filed with the Board of Appeals, it is the Board, and not DPS, which will make the final decision as to what activity is appropriate under the special exception, pursuant to Zoning Ordinance §59-G-1.3.

run, which, by its nature imposes off-site impacts upon the community. Neither DPS's Zoning Manager, Ms. Scala-Demby, nor any of Petitioner's witnesses could cite to any other community swimming pool that hosts a 5 K run.. The run would obviously add traffic and parking, and would result in some portion of local streets being blocked. As the Planning Board indicated in recommending against it, a 5 K run seems to be very tangential to what people would conceive of as a community swimming pool activity.

The proposed 5 K run may be for a very worthy cause and it may take place in the neighborhood whether or not hosted by Petitioner, but it is not the role of the Hearing Examiner or the Board of Appeals to dictate or supervise every community activity; rather, our rule, in this context, is limited to determining what activities are appropriate for a community swimming pool special exception, and the Hearing Examiner agrees with Technical Staff and the Planning Board that hosting a 5 K run is not appropriate for this special exception in this neighborhood.

7. Traffic and parking during special events:

Donald and Ruth Evans, who live on Tilden Lane, directly across from the entrance to the subject site, wrote to complain that growth of the pool, in terms of both membership and activities, has exceeded the capacity of the area to handle the traffic, spillover parking and general activity on Tilden Lane and nearby streets. Exhibit 23. The Evans suggest that Petitioner has unduly expanded its mission beyond what is appropriate for a community swimming pool.

Issues regarding activities, operating season and hours of operation have already been addressed. Traffic and spillover parking are legitimate concerns of the community that will be addressed for the first time in a Transportation Management Plan (TMP), which was modified at the request of the Hearing Examiner to contain a specific provision requiring Petitioner to provide alternative off-street parking when overflow parking can reasonably be expected.

During swim meets and other large events, the TMP requires Petitioner to station a Parking Attendant at driveway entrance to ensure that traffic flows smoothly and safely and to monitor and direct on-street parking such that vehicles are not parked illegally and residential driveways are not blocked. Pick-up/drop-off points will be repositioned deeper within the site parking lot to prevent queuing at the entrance and orange traffic cones will be placed along the south side of Tilden Lane to prevent parking of cars within 15 feet of either side of the entrance drive. Petitioner will provide alternative off-street parking areas for potential overflow parking; close the pool grounds to general membership during meets; and communicate parking controls to visiting swim teams.

A final form of the TMP, including modifications by the Hearing Examiner to incorporate his recommendations, is attached to this report as Appendix B. The efficacy of the TMP procedures should be a topic discussed at meetings of the Community Liaison Council, and the Board should retain jurisdiction to modify the TMP as necessary should the proposed provisions prove inadequate.

8. Noise Control:

Last, but by no means least, is the issue of noise control. It is noise that is the essential driver of Ms. Keller's complaint. Tr. 284. Mr. Sadoff's complaints are somewhat broader, but noise is clearly also a big factor for him. Obviously, controls on hours of operation will impact on the frequency and duration of noise disturbance, and adequate screening may also help ameliorate the problem to a small degree; however, there is no way to completely prevent noise from a community swimming pool intruding into the neighborhood.

Mr. Sadoff feels that Petitioner has been insensitive to his requests for noise reduction for years. He testified that the people at Petitioner's outdoor events have a history of losing sight of the level of noise, and assurances by the Petitioner of self-restraint in this regard are difficult for him to

believe because Petitioner has ignored his requests to modulate the amplified music for years. Tr. 288-291.

This brings us to the issue of what is amplified sound. When Petitioner uses that term, it is referring to “music/sound played through loudspeakers, portable or otherwise, or similar type of public address system,” such as the one they have been using for years. Exhibit 76(c), p. 19.

Petitioner has now agreed to forgo the use of loudspeakers to play music, but wants to reserve the right to play “background music” on CD players and similar devices at up to ten special events during the operating season, as long as the County Noise Ordinance is not violated. This concept is incorporated into Petitioner’s proposed Statement of Operations by language specifying that loudspeakers will not be used to play music on the site during swim meets or any other occasion; however, during the 10 organized events, Petitioner may play music with “a usual and conventional home reproduction system” like a little CD player or some self-contained music system. Exhibit 76(c), p. 21.

Mr. Sadoff retorts that he has been living with the adverse effects of the Petitioner's background music for a number of years. In his view, amplified music is not necessary for the operation of a community swimming pool. “[C]haracterization of amplified music as background music is not a limitation on its adverse effects.” Tr. 288-291.

Technical Staff proposed three conditions to address the noise issue, and the Planning Board did not modify those recommendations (Exhibit 45, pp. 2-3):

- All operations must conform to the requirements of the Montgomery County Noise Control Ordinance (Chapter 31B of the County Code). Specifically, noise levels cannot exceed 65 dBA at the property line during daytime hours, and cannot exceed 55 dBA at the property line during nighttime hours. Daytime is defined as the hours between 7:00 a.m. to 9:00 p.m. weekdays and between 9:00 a.m. and 9:00 p.m. on weekends and holidays; nighttime is between 9:00 p.m. to 7:00 a.m. weekdays and between 9:00 p.m. and 9:00 a.m. weekends and holidays.

- There must be no amplified noise permitted before 9:00 a.m. or after 9:00 p.m. on the pool property except that the use of a standard swim meet starting system with a “buzzer” or “tone” in compliance with the Montgomery County Noise Ordinance is permitted to regulate swim meets.
- The use of non-amplified acoustic instruments to play only the National Anthem at the start of a swim meet may be allowed.

Staff also accepted the language in Petitioner’s proposed Statement of Operations with the following observation (Exhibit 45, p. 10):

In terms of limiting noise impacts on adjacent neighbors, the applicant must abide by the terms of the revised Statement of Operations dated April 7, 2011. In the memo to M-NCPPC Technical Staff that accompanied this application, the applicant requests “the ability to have CD player-type equipment on the site to play background music for certain organized events” as detailed in the revised Statement of Operations. It is staff’s opinion that the term “background music” suggests a low level of amplification that would permit people to talk over it in normal conversational tone. [Emphasis added.]

The Hearing Examiner agrees with the sentiment expressed by Staff in the highlighted text, but is not sure how such a condition would be enforced. What the Hearing Examiner can say, first of all, is that the prohibition against amplified noise before 9:00 a.m. or after 9:00 p.m. should apply, as Mr. Sadoff and Ms. Keller suggest, to amplified noise from any device, whether it be a giant loudspeaker or a small CD player, except as specified for the use of a standard swim meet starting system. The Hearing Examiner has modified Staff’s proposed condition set forth at the top of this page by inserting the words “from any device” after the words “amplified noise” in the condition recommended by the Hearing Examiner in Part V of this report.

The next question is whether all amplified music should be banned from the site, even background music at conversational levels played by a CD player or similar device, as Mr. Sadoff and Ms. Keller desire. Neither Staff nor the Planning Board have recommended that total ban.

Ms. Scala-Demby testified at the hearing that activities that were not prohibited by the Board, including the playing of music, would be permissible, as long as the music did not exceed the decibel level permitted in the County Code. Tr. 54-55. Ms. Scala-Demby opined that it is reasonable to expect that when a swim club has social events and gatherings, there may be some music, not piped through a loudspeaker system, but some music provided as background; however, there are many Board resolutions in swimming pool cases prohibiting amplified music. Tr. 55-58, 64. In her mind, the decibel level from a loudspeaker is far higher than that of a CD player. Tr. 68-69.

John Burgett, a pool member who has managed the audio equipment for the pool, on a volunteer basis, for many years, testified that use a tabletop, conventional, self-contained, CD player radio, would not be so loud as to prevent a normal conversation. According to Mr. Burgett, Petitioner would not want to turn up the volume on this kind of equipment because it would become offensive to those on the subject site. Tr. 255-256.

Given the elimination of the loudspeaker for playing music, the other noise restrictions that will be imposed by this case and the additional review that can take place following the filing of minutes from the Community Liaison Committee, the Hearing Examiner recommends allowing the low-level background music from a CD player or small stereo player, as requested by Petitioner, but would limit it to 6 events a season, until there is a track record of how well the noise restrictions are functioning. The Statement of Operations attached hereto as Appendix A has been amended accordingly.

As stated earlier in this report, there are no perfect solutions to this dispute, but the new controls established by the Board's conditions, by the Statement of Operations and by the TMP, should go far to ameliorate the situation. At the suggestion of Mr. Sadoff, the Hearing Examiner recommends a condition requiring that copies of both the Statement of Operations and the TMP be posted at the pool and on Petitioner's website.

III. SUMMARY OF THE HEARING

Petitioner called seven witnesses at the hearing: Barbara Ship, President of Tilden Woods Recreation Association; Sara O'Neil-Manion, an expert in architecture and site design; John Coventry, an expert in lighting design; Gregory J. Osband, an expert in landscape architecture; John Burgett, a member of the pool who has run the audio equipment for the pool since 2007; Gerri Diamond, who is organizing the proposed 5K race; and Bill Bullough, a self-described “aquatics professional,” who has had a great deal of experience as an aquatics director for various governmental agencies. Three pool members also testified in support of the petition, Anna Epstein, Sidney Drill and Elena Spak. Susan Scala-Demby, DPS’s Zoning Manager, testified at the request of the Hearing Examiner to explain her opinion regarding the proposed 5K run. Neighbors Suzanne Keller and B. J Sadoff, who live on adjacent Stonewood Terrace, testified in opposition.

Additional modifications to the plans were suggested at the hearing, and the record was left open until June 3, 2011, to allow Technical Staff time to review the revised plans and to give all parties an opportunity to comment on the proposed revisions and to file closing arguments.

A. Petitioner’s Case

1. Barbara Ship (Tr. 22-37; 187-201; 220-250):

Barbara Ship is the President of Tilden Woods Recreation Association. She testified about the proposed annual Celine and Paul Silver 5K run. Two years ago, in 2009, two long-time members of the pool, Celine and Paul Silver, daughter and father, were tragically killed in an auto accident. Shortly afterwards, Natalie Silver, the mom and wife, established a scholarship fund at Walter Johnson high school, in their memory. She came to Petitioner and asked if the pool would initiate and host a 5K run in their memory to help raise funds for the scholarship. Gerri Diamond is the actual organizer. Petitioner got an opinion from DPS that it would be okay to host the run, so

Petitioner began planning and submitted appropriate permit requests. When, when it became clear that it was too contentious an issue for Petitioner to host this year, Petitioner pulled it off the table for this year, and believes it will be hosted in the park which is neighboring the pool. Tr. 22-23.

Registration for the run, if permitted in future years, probably would be on the grassy area of the pool. There would be a couple tables where people come to register and pick up their shirts and whatever else they're going to give out. They would register. It would begin at 9:00 a.m., and the race would proceed through the neighborhood. It's a 5K race so it would take 20 or 30 minutes. The whole event would last about two hours, from 9 to 11 a.m. on a Saturday, so its would be conducted within hours currently approved. The pool will not be opened to general membership until the event is done. The event is going to be limited to 200 runners. It is locally advertised through LISTSERVs in the community and through the Walter Johnson High School Tr. 24-25.

When asked by the Hearing Examiner what is the connection between a 5K run and a community swimming pool, other than the fact that the people after whom this was named were members of the club, Ms. Ship replied, "Well, I think the connection is the word community. We are a community. This is not a swimming event. This is a community event . . ." She added, in response to her attorney's follow-up, that it is not related to swimming, but there are other non-swimming activities at the pool such as card playing, volleyball and eating dinner. Tr. 26-28.

Ms. Ship described activities at the pool. The "lock-in" is a longstanding traditional activity at the pool. It's gone on for about 20 years, and except for the last couple of years, it has been an overnight event. It's probably one of the most memorable events and activities for the graduating seniors. It's an evening of very well chaperoned and supervised activities. Usually it will include some swimming in the pool, but typically the kids are out of the pool 9:30 to 10:00. There are art projects, making movies and different group activities. There's also a bonfire, approved by the fire

marshal, with roasting marshmallows and hot dogs. The kids all get T-shirts and then usually by 11:00 or 12, everything is winding down and the kids go to areas around the pool that they staked out and they go to sleep or talk quietly and play cards.

Some of the kids leave before 11:00 and go home to sleep, but once 9:30-10:30 rolls around, the gates are actually locked and that's where the name lock-in comes from. At 6:30 in the morning, the parents come by and pick up the kids and go home.

It's one of the most unusual activities because it brings the whole team together at the end of the season and the older kids act as mentors for the younger kids. This is a social activity that really brings the whole team together and bonds them.

There would be no amplified sound (*i.e.*, loudspeakers), but Petitioner is willing to agree to having no CD players and the like at this event. Petitioner will make sure the kids are out of the pool by a certain time and that when the kids are picked up in the morning, there's carpooling to minimize traffic to the pool. Kids are picked up in the corner of the pool farthest away from the neighbors and Petitioner would agree to whatever restrictions would be necessary to help the event happen. Tr. 187-189.

[Petitioner's counsel noted that the Planning Board agreed to strike Technical Staff's recommended prohibition against the overnight activity and to defer to the Hearing Examiner and the Board of Appeals to ultimately decide whether to allow the lock-in as an overnight activity. Tr. 190-191.]

Ms. Ship further testified that events are divided into two categories – organized events and just events. The organized events anticipate a larger number of people coming, and they're special events. They're not just part of the day-to-day activities of the pool. On the holiday weekends, Petitioner has a barbecue and the idea is for most of the membership to come. Memorial Weekend

Sunday, Labor Day Weekend Sunday, and July 4th are three of the larger organized events. Petitioner also has an adult party typically once a year as an organized event. The fifth grade Luxmanor graduating class uses the pool one afternoon, which is an organized event. Another example of an organized event would be a large volleyball tournament or the lock-in or a pot luck dinner. According to Ms. Ship, typically, Petitioner's parking lot is enough to handle most of that. There may be some times where there may be some overflow parking, and if that were the case, Petitioner would implement its transportation management plan (TMP). Tr. 192-193.

[The Hearing Examiner asked Petitioner to modify its TMP to require the Petitioner to always arrange for alternative parking when there is going to be an overflow. Tr. 193-200.]

Ms. Ship testified that the other type of events that Petitioner has are not really organized events. They are events that happen at the pool as amenities to the general membership. These include a raft night, a grill and chill, age-specific swim nights and the like. Ms. Ship interpreted the Planning Board's recommendation as allowing Petitioner to have 10 organized events between Memorial Day Weekend and Labor Day Weekend and then two additional events after Labor Day Weekend until the pool closes. All these events occur within the currently allowed hours of operation, except for the overnight portion of the lock-in. Tr. 200-201.

Ms. Ship further testified that Petitioner would continue to have the limit of 350 family memberships. She noted that the original special exception did not restrict Petitioner to a particular season, and the pool therefore could have operated 12 months out of the year. Petitioner has had requests from members to be able to open before Memorial Day and to close after Labor Day. Four or five years ago, the pool purchased a heater in part to be able to expand the season, to swim earlier in the season and to swim into the evenings after the season. Although Petitioner has not opened the pool before Memorial Day Weekend or after Labor Day Weekend, Petitioner has had activities before

and after. The Planning Board recommended that Petitioner be allowed to open the pool May 1st and close the pool the end of September, but be able to be open for activities through the end of October. Petitioner agrees to that. If Petitioner did extend beyond Labor Day, the likely use of the pool would be a lot less than during the regular summer season, and it wouldn't affect swim team season at all. The team would still begin practice after Memorial Day and the season would end at the end of July just like it does now. Tr. 220-222.

Ms. Ship discussed the various swim team activities, noting that the Planning Board had recommended allowing swim team warm-ups for advanced swimmers beginning at 6:30 on Saturdays and other expansions of the hours of operation. Petitioner agrees with all the Planning Board time-of-operation recommendations except for the lock-in. Tr. 223-231.

With regard to amplified music, Ms. Ship testified that Petitioner has never been found to be out of compliance with the County Noise Ordinance. Because of the concerns of the neighbors, Petitioner has agreed to not having amplified music (by which she meant amplified through large speakers). Petitioner would, however, like the ability to use background music produced by small portable players without detached speakers. Ms. Ship also described the starting system for the swim meets. Tr. 232-233.

Ms. Ship testified that holes and height issues with the fence have been corrected, and Jack Mohr of Health and Human Services sent an e-mail (Exhibit 73) indicating that COMAR requirements have been met. Tr. 234-235. Ms. Ship indicated that Petitioner also accepted the Planning Board recommendations regarding the Community Liaison Council. Tr. 236.

Ms. Ship also mentioned that at some point in the future, Petitioner would like to erect shade umbrellas (described in Exhibit 74) in place of current shade pavilions, as noted in the revised site plan. Tr. 237-240.

Ms. Ship further testified that the pool is a place for the community to come together and socialize and get to know each other and in order for Petitioner to be financially viable, it needs to be able to run a successful pool and swim team program. Tr. 242.

Although alcohol is not mentioned in the Statement of Operations, Petitioner gets an alcohol license and a food service license, and the County comes out and periodically inspects with regard to food and alcohol services. Tr. 244.

On cross-examination, Ms. Ship described Petitioner's noise policy: There will be no amplified noise at all before 9 in the morning or after 9:30 at night except as indicated below. That any amplified noise will also be compliant with the County Noise Ordinance. That Petitioner will use a swim starting system that is compliant with the Noise Ordinance as well to regulate swim meets. That Petitioner won't use that before 9 in the morning or after 9 in the evening. During the swim meet, Petitioner can have a couple of small portable speakers with a handheld microphone only to announce the swimming events or to make safety or emergency type of announcements. At no time will those speakers be used to play music during swim meets or any other occasion. During the 10 organized events during the year, Petitioner may use music with a usual and conventional home reproduction system like a little CD player or some self-contained music system. If Petitioner plays music on these home reproduction systems, it would be at a volume during which people would be able to carry on normal conversation. Tr. 246-248.

Finally, Ms. Ship testified that Petitioner always has lifeguards attending if kids are swimming. Tr. 249.

2. Sara O'Neil-Manion (Tr. 70-117):

Sara O'Neil-Manion testified as an expert in architecture and site design. She described the site plan she prepared and the nature of the subject site, which labeled a "pipestem site." It slopes

from north to south and also from west to east, so the lowest point would be on the southeast. There's a natural draining. There's also quite a bit of slope --almost a full story from just one edge of the parking lot to the building. As a result, there's a natural embankment that actually screens the building from other areas because of the slope of the ground. Tr. 75-76.

Ms. O'Neil-Manion described the structures on the site, noting that the single-story swim facility bathhouse and is located centrally in the lot. The swimming pool is on the southeast corner which places it a maximum distance from the residences and closer to the park. The side yard requirements are 75 feet from the property line to the swimming pool, and the swimming pool exceeds that, as well as all other setback requirements. The placement of the pool house serves as an additional screening of the swimming pool. There continuous fencing and a fair amount of evergreen trees that were planted in the margin. The property line is beyond the fence line, and there are screening trees between the fence line and the property in some cases. Where it gets tight to the property line, there are evergreens between the parking lot and the fence. Tr. 76-79.

This pool house is a single-story, pretty comparable to the size and scale of the surrounding neighborhood. It's a masonry structure with a shingle roof. The swimming pool is a standard six-lane swimming pool with a shallow area and a deep area for diving. There's a separated tot pool that's shallow and it has a separate fence area. There are some older wood shade structures to the south side, and the separate pump house on the southeast side, which is the natural drainage side of the site. The pool and all structures meet the required setbacks, as confirmed by a letter from DPS (Exhibit 24(f)). Tr. 78-82.

Ms. O'Neil-Manion described the parking lot and the calculation for the capacity of the swimming pool, which is 428 or 430, depending on which method is used. One divides that by 7 to

determine the number of parking spaces required, which comes out to 61 to 62 spaces. 64 spaces are provided. Tr. 85.

Ms. O'Neil-Manion also described the parking lot and concluded that nothing in the access or the lot would present any difficulty for a normal sized automobile. Tr. 86. The fencing was described as follows: From north to south, there's one line of wood fencing along the western edge of the upper parking lot. Then going westward along the north side of the property, there is wood fencing. Then coming south from the northwest corner, there is wood fencing until about midway to the point where it meets the pool enclosure fence, and then it converts over to chain link following south. It then comes straight down and angles in an easterly direction. Then it takes another angle in a southeasterly direction, and continues east along the southern property line but off the property line. In all cases, the fences are off the property line. The fence then it comes back up north, continuing north from the southeast corner to the northeast corner of the property, it's all chain link. The height of the chain link fence along the east side is primarily six feet all the way along the east property line. According to Ms. O'Neil-Manion, it should be measured from the outside. Exhibit 62 was marked with blue highlighter to show the existing chain link fence that met the 6 foot height requirement and yellow where it was raised to meet the requirement. Tr. 87-93.

Ms. O'Neil-Manion further testified that a pedestrian access is being proposed so people who are walking to the swim club can walk without traversing the traffic areas, and this walkway starts on the northwest side of the, the pipestem, continues in a southerly direction, then goes west around the parking lot, comes down to the end of the parking lot and picks up the existing sidewalk. Tr. 94.

A vending machine is currently located outside, on the west side of the existing building, and it is going to be brought inside. Also, the existing wood shade structures will be replaced with umbrellas. The parking lot will be re-striped and the existing sign will remain. Tr. 95-96.

In Ms. O'Neil-Manion's opinion, the subject site is compatible with its surroundings. It's a community swimming pool which would be standard in a suburban community. The pool house is small scale compared to some other swimming clubs. The swimming pool is a standard six-lane lap pool with a diving well. The pump room is smallish, and current standards are much larger.. She further opined that none of the existing or proposed physical improvements, including the lighting and landscaping, would cause any adverse impact on the neighborhood. They also meet all applicable development standards in Zoning Ordinance §59-G-1.23 and the specific standards of §59-G-2.56. The site is not in a special protection area and is in harmony with its surroundings Tr. 96-100.

On cross-examination, Ms. O'Neil-Manion admitted that there were two addresses for the site at one point, but the special exception referred to only one address, which created some confusion.¹⁸ Tr. 115.

3. John Coventry (Tr. 117-138):

John Coventry testified as an expert in lighting design. He described the current and planned lighting on the site, as described in the lighting plan (Exhibit 6). Tr. 119-121.

Mr. Coventry then described the proposed changes. There are two main issues. One is light trespass which is how light actually comes from the site onto any adjacent residential properties, and there is a requirement that that not exceed a tenth of a footcandle at the property line measured horizontally on the ground, at the ground plane. Exhibit 6, shows those numbers for illumination along the property lines, as determined by a computer program, assuming the proposed new fixtures. The second issue is perceived glare of light fixtures from off property. Light fixtures need to be

¹⁸ As noted earlier in this report, the original special exception apparently listed the address as 6808 Tilden Lane, because it was so referenced in earlier documents pertaining to this case. It has since been changed to 6806 Tilden Lane, which is the address listed on the subject modification petition (Exhibit 1), as well as in the current tax records and on the property sign. Tr. 281-282.

shielded or in some way baffled to reduce the brightness of the fixture itself. There is no metric given for that in the Code, so Petitioner is making sure that lights aren't directly aimed into adjacent property and that the fixtures themselves have baffles and shields and various other pertinences and accessories so that we minimize view of the lamp itself, which is really the source of the glare. Tr. 120-122.

Along those lines, Petitioner proposes, in the locations marked E, F and G, to take out the bare lamp holders currently there and replace them with a type of light that holds the same kind of light bulb but has a baffle. Tr. 122. Mr. Coventry introduced cut sheets for the proposed new fixtures (Exhibit 66) and described them. Exhibit 6 demonstrates that there are no photometric measurements that exceed 0.1 at the property lines. Tr. 124-130. According to Petitioner's counsel, "The lighting changes will be implemented immediately . . . as far as shielding and the . . . upgraded fixtures" Tr. 131.

In Mr. Coventry's opinion, the lighting plan proposed by applicant will locate and shield all outdoor lighting so that no direct light will intrude into any adjacent residential property, and the proposed replacement fixtures include glare and spill light control devices to minimize glare or light trespass onto adjacent properties. Moreover, the predicted footcandles will meet the Zoning Ordinance requirement of less than 0.1 footcandles along the side and rear lot lines. Tr. 131-132.

On cross-examination by Mr. Sadoff, Mr. Coventry indicated that the new fixtures were designed to eliminate the glare problem reflected in CBA-1383, Exhibit 46(j).¹⁹ Tr. 134-137.

4. Gregory J. Osband (Tr. 139-166, 174-186):

Gregory J. Osband testified as an expert in landscape architecture. He discussed the current landscape screening on the site and his proposal to add six new evergreen trees and two large evergreen shrubs to provide additional screening on the southwest corner to address any deficiencies

¹⁹ CBA-1383, Exhibit 46(j) is an exhibit admitted during the 2010 hearing, prior to the full modification petition.

in screening the site from the property on the cul-de-sac at 6804 Stonewood Terrace (*i.e.*, the Sadoff/Keller residence). Four of the new trees would be interspersed with the existing trees. They would be planted near the bottom of the hill that slopes up towards the lawn and the sand volleyball court. Two more trees would be planted along the northern edge of the other trees at the corner of the property at Stonewood Terrace. Petitioner also proposes a couple of additional shrubs to fill in where there are gaps in the existing shrubs, to provide additional screening. Tr. 142-144.

Mr. Osband recommended planting American Holly Trees because other varieties are susceptible to disease or being eaten by deer. He also recommended trees 5 to 6-foot height because there's a wealth of literature showing that if you plant a larger tree, you get an instant tree that sits there and does not grow very well. The smaller tree will adapt and in less than five years, they usually catch up and overtake and they will outlive and be much healthier than, than the large trees that you plant. Tr. 149-150.

As to the additional shrubs, Mr. Osband recommended the red-tipped photinia, or fraser photinia, which gets to be about 15 feet high and 15 feet wide and it tolerates a very wide range of conditions, but there are other possible species that will succeed there. Tr. 151-152.

Mr. Osband reviewed proposals for plantings by Mr. Sadoff and suggested that his proposals would not work because those proposed plantings would either lose lower branches as they age (*e.g.*, white pine) or be eaten by deer (*Arborvitae*) or be broken by snowfalls from which they do not recover. Moreover, any type of solid planting row would be inconsistent with the exiting forest and would "stick out like a sore thumb because it's not compatible." He introduced photos to support his testimony - Exhibits 70(a), (b) and (c). Tr. 153-160.

In Mr. Osband's professional opinion, Petitioner 's revised landscape plan complies with the screening requirements of Section 59-G-2.56(c) which requires a wall, fence or shrubbery to substantially screen the pool from view of the nearest property of such residential zone. Tr. 163.

On cross-examination, Mr. Osband admitted that in terms of covering up or screening the bathhouse, it would take three to five years for the proposed trees to grow tall enough. Tr. 185.

5. Gerri Diamond (Tr. 167-173):

Gerri Diamond testified that the 5K run is a neighborhood event to be held in honor of two residents who were killed in a car accident in August 2009, with the proceeds to benefit the local high school scholarship funds. The participants would all be from the neighborhood since all the advertising has been done through the local neighborhood LISTSERVs. About 100 participants are expected. Ms. Diamond views the 5K run as a way to bring the community together in light of a tragedy that affected a lot of people related to the pool.

When asked about logistics for the planned run, Ms. Diamond replied that the County issued a permit for the event. The traffic would be controlled by either the County Police or the Park Police, depending on where the event is being held. She expected a lot of people would walk to the event, so parking would be controlled that way. Ms. Diamond indicated that police would provide traffic control and no major roads would be affected. Traffic would be allowed on at least half of each neighborhood street.

They had hoped to use the pool parking lot for parking and participants would sign in and register on pool property, but that would really be the only part of the pool that was being used for the event. Sign-ins will start at 9 a.m., and the race will start at 10 a.m. It's a 3.1 mile run so she expected it to be over by noon. Thus, the whole event would take three hours.

The current permit is to start and end in the park adjacent to the pool. So the only difference would be if the pool were to host it next year, the run would start and end in the pool parking lot. There is no plan to use any amplified starting equipment, entertainment or music as a part of the race. The Luxmanor Elementary School or another school could be used for overflow parking.

6. John Burgett (251-261):

John Burgett testified that he has been a member of the pool since 2004, along with his wife, who is the representative for the A swim team meets. Three of his children swim on the swim team. Since 2007, Mr. Burgett has managed the audio equipment for the pool, on a volunteer basis, running speakers for providing music for swim meets and for most of the special events that the pool has had since 2007.

The equipment used is his own personal equipment, including two JBL, 12-inch, two-way speakers. They're used for large venues to go over a long distance; in this case, to go across the pool. They're used with a Mackie mixer and they provide good quality sound, a loud enough for the folks to hear the sound used for announcements, and for announcing swim meets, all around the pool and the deck area.

Out of concern for the neighbors, Mr. Burgett sets up the music typically, if not exclusively, on the eastern side of the bathhouse with the speakers facing away from Stonewood Terrace at all times. Knowing that there were neighbors that were sensitive to sound, he would walk around the perimeter of the pool, listening to ensure that the music or the sound was in no way, at least to his ears, bothersome or adverse to the neighbors. Mr. Burgett used a Radio Shack sound meter to determine that the sound was not bothersome or certainly did not violate the Noise Ordinance. He also stood on Stonewood Terrace just to listen and make sure that there was nothing troubling with respect to the sound equipment.

At times, such as for the Luxmanor Elementary graduation party, an outside DJ was brought into the pool grounds and played music. That may have been loud but he had no control over that. But for the organized events, and the swim meets, Mr. Burgett controls it.

As a compromise to the neighbors and to move things along, Petitioner is proposing to no longer use his speaker system, but rather to use a tabletop conventional self-contained CD player radio, which Mr. Burgett felt “certainly will not get as loud as the equipment that I had been using and that the pool had previously used.” Tr. 255. He indicated that it would not be so loud as to prevent a normal conversation. It would be for small gatherings, low-key background music, and the pool would not want to turn up the volume on this kind of equipment because it would be offensive even to those on the subject site. Mr. Burgett could not imagine more than one such device being used at one time.

[Petitioner’s attorney indicated that Petitioner agreed to abide by Technical Staff’s recommended condition 11, which would prohibit amplified noise before 9 a.m. and after 9 p.m., except for a swim meet starting system with a buzzer or tone in compliance with Montgomery County Noise Ordinance. Tr. 258.]

7. Bill Bullough (261-274):

Bill Bullough testified that he is an “aquatics professional,” who spent five years as the first aquatics director for the City of Rockville, 30 years as aquatics director for Montgomery County Recreation Department and seven years as an aquatics director for the City of Gaithersburg. He has been to most of the community swimming pools in Montgomery County and has trained their lifeguards and swim coaches. Mr. Bullough was on the Board of Directors for the Montgomery County Swim League (MCSL) for more than 20 years so, and that is the biggest swim league in the County.

Of the 300 licensed pools in Montgomery County, Mr. Bullough estimates that 150 of them are community type pools like Tilden Woods. Of that 150, 90-plus are in the Montgomery County Swim League, and most of the others are in other smaller leagues. In his opinion, a swimming team function is very much intrinsic to what these community pools are all about and all of the functions that spin off of that are as well. Tr. 263.

Although Mr. Bullough was unaware of any other community swimming pool running a 5K race, the idea of doing so didn't surprise him, nor did he feel it would be outside the scope of the pool's functions. He also feels that fund-raisers, the lock-in event and swim team warm-ups are all typical and appropriate for community swimming pools. Tr. 264-266.

Mr. Bullough further testified that the viability of community pools is vital to the whole plan for Montgomery County. The county saves tax dollars because the County does not need to build as many public facilities to augment the existing private facilities. Tr. 267.

According to Mr. Bullough, the statutory language limiting attendance to only members and their guests has not been interpreted by other pools to restrict them from doing an open house or any other kind of community event that would give exposure to the community of the swimming pool. A club will take on a membership policy and a guest policy on its own, with varying numbers of guests permitted. The whole idea there is to not have so many guests coming in that members are adversely affected. Pools have to do some outreach to keep the membership up. Some have not and have closed. Tr. 268-269.

Mr. Bullough also noted that the guidelines put together by the Montgomery County Swim League for reducing adverse effects on neighbors contain the very things that this pool has already taken upon themselves to do, such as turning the noise volumes down to mitigate impacts during swimming meets. In his opinion, there shouldn't be any reason why the pool cannot have activities

that start at 6:30 in the morning or 7:00 in the morning to allow an earlier warm-up. If there are too many to warm up in a half hour, somebody will get hurt. Early morning swim and early morning swim team practice in the County pools throughout this County are beginning to be standard practice. Mr. Bullough also testified that the assumption that the operating season is Memorial Day to Labor Day is folklore. While some pools, maybe a majority of them, do have that season, they're not restricted to do that. The extended season does not cause a disturbance because those activities are usually minimal and quiet. Most of the people don't come out then. More and more pools, particularly down county, have added heaters with the idea that the water is going to be usable when they open Memorial Weekend, but they also might choose to open up in early May or mid-May and go into September to extend their season and take advantage of the heated water. Tr. 270-274.

B. Government Witness

Susan Scala-Demby (Tr. 37-69):

Susan Scala-Demby testified that she is DPS's Zoning Manager. The Hearing Examiner initially questioned her about a letter, dated April 12, 2011, indicating her opinion that the activity plan for a 5K race at the community swimming pool in question was appropriate under the special exception. The Hearing Examiner asked whether or not, in her mind, there has to be some relationship between the activities that are approved for a special exception and the nature of the special exception itself. Tr. 38.

Ms. Scala-Demby responded that while something totally unconnected would not be acceptable, she felt the run was acceptable because it was to honor two former members and members of the family continue to belong to the pool. When pressed by the Hearing Examiner as to whether the nature of the activity has anything to do with what she would consider in approving it, Ms. Scala-Demby replied that because most of the activity would take place off site on the streets, she was "not

sure that there has to be that connection.” Tr. 39-40. When asked whether an off-site activity would impose an even greater burden on the community, she responded that this was a once-a-year activity.

On cross-examination, Mr. Sadoff raised a legal issue as to whether DPS has the authority, under Code §2-42B(a)2(A), to offer advisory opinions regarding whether a proposed activity is permissible under a special exception. Tr. 42-49.

On re-direct, Ms. Scala-Demby testified that, absent any specifics from the Board of Appeals on what the Pool can do versus what it can't, she looks to other swim clubs to see what kinds of things they have been given permission to do. Generally, the Board's resolutions do not specify limits on permitted activities. However, she did not see any other swimming pools that have sponsored a 5K race or a run of any kind. Tr. 50-52.

The Resolution in this case also did not limit the season. In a lot of pools, the season was Memorial Day to Labor Day, or May to October, because sometimes September and October months are relatively warm. There's a general sport atmosphere to a swim club, but they also have fundraisers, family gatherings, birthday parties and adult parties that take place at the pools. Tr. 52-53.

In the opinion of Ms. Scala-Demby, the statutory language limiting admission to families, members and their guests does not prevent a pool from opening up to the community so that they could see what goes on at the pool and perhaps join if the pool is looking for membership, but it should not be a “regular practice,” and she “would feel more comfortable if individuals invited members than the pool.” Tr. 54, 61.

Ms. Scala-Demby indicated that activities that were not prohibited by the Board, including the playing of music, would be permissible, in her opinion, as long as the music did not exceed the decibel level permitted in the County Code. Tr. 54-55. The manner in which the Board has

controlled amplified sound at other pools was discussed. Ms. Scala-Demby indicated that it is reasonable to expect that at a swim club where they have social events and gatherings, there may be some music, not piped through a loudspeaker system, but some music provided as background; however, there are many Board resolutions in swimming pool cases prohibiting amplified music. Tr. 55-58, 64. In her mind, the decibel level from a loudspeaker is far higher than that of a CD player. Tr. 68-69.

C. Community Witnesses

Three community witnesses testified in support and two testified in opposition.

1. In Support of the Petition:

a. Anna Epstein (Tr. 202-208):

Anna Epstein testified that she is a 17 year-old junior in high school. This summer will be her twelfth summer as a member of the Tilden Woods Swim Team, which has had a profound impact on her life. Had it not been for Tilden Woods, she and her family would never have gotten the chance to meet and get to know the neighbors that are now among her closest family friends. Since her first summer on the team, she has had a support group of older team members that has had an immense impact on her development as a person. According to Ms. Epstein, their constant care, attention and nurturing affected her deeply. She stated that the caring and support of the older kids for the younger ones exemplifies what Tilden Woods is all about in her mind – community, kinship and support.

The sense of community and the close ties that she has formed with her teammates were developed through many swim team activities. One activity in particular that unites the team is the annual lock-in. “I remember not being able to contain my excitement at the thought of a sleep-over at the pool with my whole team. Some of my happiest memories come from those nights whether it was making movies, dance routines or even pirate ships with my coaches and teammates. Although many

years I ended up falling asleep earlier than I had intended, nevertheless, the lock-in weekend was always a highlight of my summer.” Tr. 205.

Though there are many events throughout the summer, the lock-in gives the community a chance for countless neighbors in the neighborhood to come together and, in spending the night together, be able to bond and learn about one another and see how a community and family should work. “I think the lock-in really is the best, it's a great way of doing that.” Tr. 207-208.

Ms. Epstein indicated that “CD players are completely unnecessary [at the lock-in].” Tr. 208.

b. Sidney Drill (209-217):

Sidney Drill testified that she is currently a senior at Walter Johnson High School and was a captain of the swim team. She loves to swim. Ms. Drill moved into Tilden Woods when she was five years old and joined the team when she was eight.

According to Ms. Drill, the lock-in is probably the biggest time of the year for the little kids, who are looking up to the older kids to see what they do and how they act. To watch the older kids on the team sit down and tell them ghost stories or play cards or splash around in the pool doing relays and have good, clean fun is huge for the little kids on the team. And then when they grow up, they want to be good role models too.

Ms. Drill testified that the lock-in is not that loud, especially at night because everybody is exhausted. By 11:00 or midnight, half the kids on the team are asleep. A bunch have left already because those 10 or under have to have a chaperone, and a lot of parents don't want to stay overnight. The older kids, while used to staying up later, are still exhausted, so generally, they just get into little corners and whisper to each other because everybody else is sleeping and they try to respect them. Tr. 209-211.

According to Ms. Drill, the early morning warm-ups for the swim team are not loud. The loudest part of morning practice is when they stretch and clap, and the clap can be eliminated, if necessary. They have an analog clock that doesn't beep. There are so many kids who swim at the meets that the pool is too crowded to effectively warm up then. The early morning warm-ups allow warming up prior to the meet. It's really quiet because the swimmers respect the fact that it is a Saturday morning. Every single team in the higher divisions with a lot of good swimmers need some sort of early warm-up for their swimmers to compete their best. The warm-up is also for health and safety because without a proper warm-up, a swimmer is much more prone to injury. Tr. 214-217.

c. Elena Spak (Tr. 218-220):

Elena Spak testified with regard to the issue of the early morning swim warm-ups. She swims for the University of Pittsburgh. Every single morning that there is a Big East meet, team members have to wake up at 6 in the morning and do a wake-up swim to loosen their muscles up. After breakfast, they go back and warm up again. Every college program that she has heard of has earlier warm-ups. According to Ms. Spak, there's a health reason for the warm-ups, and they are necessary for older swimmers to keep their muscles the way that they need to be to perform at a high level. Tr. 218-219.

Ms. Spak added that "the lock-in does mean a lot to a lot of people." Tr. 219. The interaction with so many of her younger peers throughout this Tilden Woods experience led her into her favorite area of study – developmental psychology.

2. *In Opposition to the Petition:*

a. Suzanne Keller (Tr. 275-286):

Suzanne Keller, who lives on Stonewood Terrace adjacent to the subject site, testified that she continues to have misgivings about the Petitioner's ability to regulate amplified music, games,

movies, or anything else that's not specifically restricted. She is also not sure about whether the proposed additional trees will give "substantial landscape screening." Tr. 275. Ms. Keller admitted that she did not have any contrary evidence to contradict what Petitioner's landscape architect testified was appropriate screening for the site. Tr. 277.

Ms. Keller noted that Tilden Woods' website defines guest. She feels that when there is an open house to entice and market to the neighborhood or for fund-raising or a 5K race, it has an element of opening a facility to the public. There aren't neighborhood boundaries on this pool, so when it is opened to the public, noise, traffic and parking problems are created. Tr. 278.

Ms. Keller cited a number of instances where the pool did not follow its own limits on hours and also allowed noisy events, but DPS enforcement is inadequate. Tr. 279-281.

[In response to a question raised by Ms. Keller, Petitioner's counsel indicated that the address of the swimming pool has been changed to 6806 Tilden Lane, which is the address in the current tax records and on the property sign. Tr. 281-282.]

Ms. Keller stated that she would appreciate further consideration for substantial screening and for solid fencing, and not trees that lose their leaves. Tr. 283. Noise is the biggest issue for Ms. Keller. Tr. 284. When asked if there were conditions that would suffice to allow the all-night lock-in, Ms. Keller stated that there should be no amplified noise and no amplified music at all during the lock-in, and no diving board or volleyball after 9 p.m.. Tr. 284-285.

b. B. J. Sadoff (Tr. 287-305):

B. J. Sadoff, who lives on Stonewood Terrace adjacent to the subject site, asked that the Hearing Examiner consider his comments of April 25 addressed to the Planning Board, April 21 addressed to the Hearing Examiner and March 7 addressed to the Technical Staff. The letter to Technical Staff contains a listing of 14 requested conditions that he believes will further the goal of

enabling the Petitioner to pursue appropriate activities at the subject site as a community swimming pool while simultaneously protecting the neighborhood by ensuring limits on the activities at the subject site. Tr. 288.

Mr. Sadoff feels that the use of amplified music and amplified sound is not inherent in the operation of a community swimming pool and that the proposed use of amplified music, even at the proposed level of a usual and conventional home reproduction system, is reasonably likely to have adverse effects on the neighborhood. He therefore requests that it be prohibited on site. Mr. Sadoff does not make the same distinction between a table-mounted CD player and a speaker system that Petitioner does. He feels that Technical Staff's comments about a normal conversational tone are difficult to define and enforce.

Mr. Sadoff testified that the people at Petitioner's outdoor events have a history of losing sight of the level of noise. It is likely that the Petitioner's proposed use of amplified sound will have adverse effects on the neighborhood, and he has been living with the adverse effects of the Petitioner's background music for a number of years. This is a community swimming pool and amplified music is, in his view, not necessary for the operation of a pool. Characterization of amplified music as background music is not a limitation on its adverse effects. Any assurances by the Petitioner of self-restraint in this regard are difficult for him to believe because Petitioner has ignored his requests to modulate the amplified music for years. Tr. 288-291.

Mr. Sadoff feels that Petitioner did not demonstrate need for an expansion of season and hours of operation, as he believes is required under Zoning Ordinance §59-G-1.24. [The Hearing Examiner noted that views that particular provision as applying to whether or not the special exception should be granted, not whether or not some expansion of specific activities should be permitted on a site that already has a special exception.] Tr. 291-292.

Mr. Sadoff agreed with Technical Staff's recommendation that the operating season be limited from Memorial Day to Labor Day, and disagreed with the Planning Board's recommended operating season of May 1st through September 30th. In his view, the Planning Board's recommended expansion in months and hours of operation beyond those recommended by the Technical Staff is not supported by an appropriate application of the Zoning Ordinance. Mr. Sadoff stated that he had lived in this County since he was 9 and has been a member of swimming pools and swim teams during that time and the dates of operation have always been Memorial Day to Labor Day. He noted that when he moved into the neighborhood, he knew the pool was there. He was a member of the pool and expected that it would be open from Memorial Day to Labor Day, as has been traditional. Tr. 292-294.

With regard to screening, Mr. Sadoff noted that the Planning Board expressed concern that sufficient and substantial screening be provided. He worries that it may take three to five years before the proposed evergreens grow enough to screen the pool and the building. Mr. Sadoff indicated that he is not a horticulturalist or trained in that area and so he can't advise the Technical Staff or the Hearing Examiner as to what may be more appropriate to provide more screening. [The Hearing Examiner noted that he would be greatly influenced by the expert testimony and by what Technical Staff says on this point because there is no contrary evidence.] Tr. 295-296.

Mr. Sadoff further testified that the proposed 5K race is not an appropriate activity for the community swimming pool. The event is reasonably likely to increase noise and traffic. Moreover, the proposed 5K race is yet another event where the Petitioner proposes to open the facilities to the general public. Mr. Sadoff observed that a community swimming pool, according to §59-A-2.1 of the Zoning Ordinance, is restricted to family members and their guests. The Petitioner defines guest on

its website as being an individual accompanied by a member of the pool who must be signed in to the pool by a sponsoring member on a guest log and who is required to sign an insurance waiver.

Moreover, a lifeguard must initial each entry of the guest log as an acknowledgment of the completed waiver. The sponsoring member is then assessed a fee for the guest to use the pool and the property.

These definitions in the Zoning Ordinance and the Petitioner's operating procedures compel the conclusion that the Petitioner's pool and property should not be and is not intended to be open to the general public.

The Zoning Ordinance definition of a community swimming pool is to be contrasted with the definition of a private club which contains no similar restriction on use. Private clubs authorized, under §59-G-2.42, however, do not enjoy the exclusion from the general conditions requirements of G-1.21(a) that is provided for community swimming pools. The petitioner should not be permitted to expand their operations by comparison to activities allowed by private clubs, while also seeking the protections of §59-G-2.56 as a community swimming pool. Tr. 296-297.

Mr. Sadoff further argued that Petitioner's reliance on a DPS opinion letter of April 12 for authorization to use the pool to host the 5K race or any events not specifically prohibited by the special exception is, in his view, not appropriate because DPS does not have the authority to grant such a permit or advisory opinion. Sections 59-G-1.3(a) and 59-G-1.3(b) of the Zoning Ordinance describe the function of DPS in the special exception process as an investigator for the Board of Appeals wherein findings are to be filed with the Board of Appeals after investigation of existing conditions. There is no provision in the Zoning Ordinance or elsewhere in the Montgomery County Code authorizing DPS to issue advisory opinions or permits relating to future proposed uses within the context of a special exception. DPS should refer such inquiries to the Board of Appeals for

consideration of modification of a special exception. [The Hearing Examiner noted his disagreement with this interpretation, as is discussed elsewhere in this report]. Tr. 297-300.

Mr. Sadoff also urged a limitation of the pool membership to 322 family memberships consistent with his interpretation of COMCOR § 51.00.01.04A, which regulates the “Sizing of Pools” in Montgomery County. He argues that because the pool has a capacity of 428, and the regulation specifies that a community swimming pool should be designed to have a capacity of 1.33 times the stated family membership, the family membership should be 322 (*i.e.*, $428 / 1.33$). To allow the Petitioner continue with the membership of 350 family members would be contrary to 59-A-4.126 of the Zoning Ordinance, which provides a limitation on the Board of Appeals by specifying that nothing in the Zoning Ordinance authorizes the Board to validate, ratify or legalize any violation of law or regulation. Tr. 300-301.

[Petitioner’s counsel responded to this argument as follows (Tr. 301-303):

MS. LEE-CHO: That regulation has been put in place as a design mechanism to anticipate the likely volume of use on any particular day that the pool that would need to accommodate. It's used by the County to help regulate and design and approve plans for when swimming pools are proposed to be constructed as a design construct. Once constructed, the pool capacity is set. It's based on the surface area and at any given time, no more than 428 persons can be in that pool.

So after a pool has been constructed, the use of that ratio and formula is no longer relevant. It clearly is not relevant to the Board of Appeals' approval and if you look back at Board of Appeals approvals for families, the family caps, it's based on what is represented by the applicant at the inception of the special exception as to what they would self-impose as a cap number for their facility and what they believe they can accommodate both, and need both financially, to remain financially viable. . . .

Tilden Woods currently is not in excess of their 350 family cap, they are not requesting any greater than that number than originally approved and there is absolutely no justification for reducing it, especially in a situation where we have a user or load capacity. And that regulation cited by Mr. Sadoff is not intended to apply retroactively to underwrite or reduce the cap. We have had Mr. Jack Mohr out on the site and inspect. He is a regulator of these pools in the County. He has authorized us to move forward for the next season based on our compliance with all of the codes that he reviews and there's been no requirement to adjust our 350 cap number in order to proceed.]

[The Hearing Examiner also noted that the referral to him was limited to the elements of the modification request and those aspects of the existing special exception that are related to the modification request, which does not include a requested change in membership.] Tr. 303.

Mr. Sadoff further testified that there are no conditions that would make an overnight lock-in acceptable to him, and that he objected to the warm-ups beginning at 6:15 or 6:30 a.m. Tr. 303-304.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met and that it is compatible with the existing neighborhood.²⁰ Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable standards.

Petitions to modify the terms or conditions of a special exception are authorized by §59-G-1.3(c)(4) of the Zoning Ordinance. In Part I.B. of this report, we mentioned that the Board of Appeals' resolution effective September 10, 2010, referred the full modification petition to the Office of Zoning and Administrative Hearings for a public hearing to address operational, fencing and lighting issues "within the scope of the modification request."

As noted at the beginning of this report, the core issue in this case is the compatibility of the proposed operational changes with the immediate neighborhood. Although some of the modifications

²⁰ Usually, the Petitioner must also establish that the use will conform to the applicable master plan. Community Swimming Pool special exceptions do not expressly require such a showing because the section of the zoning ordinance referencing the master plan, §59-G-1.21(a)(3), is made inapplicable pursuant to the terms of §59-G-2.56, as explained elsewhere in this report. Though it could be argued that conformity with the master plan is an inherent requirement of special exception uses, the Hearing Examiner has instead analyzed this case in terms of applicable requirements set forth in the Zoning Ordinance.

sought would significantly expand the operations originally permitted in this special exception (*e.g.*, hours of operation), many of the proposed changes are designed to ameliorate existing site conditions (*e.g.*, lighting and screening) and operations (*e.g.*, noise and traffic) which have had a negative impact on the neighbors.

Based on a careful review of the record, the Hearing Examiner largely agrees with the Planning Board's analysis and recommends approval of the majority of the modification petition with the conditions specified in Part V of this report.

A. Standard for Evaluation

The standard for evaluating a special exception application prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. *“Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.”* Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. *“Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.”* *Id.*

In the context of a modification petition, this dichotomy is of less utility because the special exception already exists. The original approval of the special exception means that any non-inherent adverse effects were not a sufficient basis to deny this special exception. The question now is what physical site characteristics and operational characteristics should be permitted on site, and what conditions are necessary to ensure that the special exception does not impose undue adverse impacts upon the community. Zoning Ordinance §59-G-1.22(a), expressly authorizes the Board, to

“supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.”

On the other hand, the inherent characteristics of a community swimming pool special exception must not be undermined by any such additional requirements (*e.g.*, the Board cannot bar swimming as a condition of operating a community swimming pool because that would eviscerate the special exception grant). Thus, the standard to be applied here is a determination of the requirements necessary to protect nearby properties and the general neighborhood, while preserving the special exception’s inherent characteristics as a community swimming pool.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a community swimming pool use. Characteristics of the proposed modifications that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed modifications that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff suggests that the inherent characteristics of a community swimming pool include (Exhibit 45, p. 11):

- (1) early and long hours of operation;
- (2) traffic to and from the site by members, staff and visitors;
- (3) noise associated with the various activities on the site;
- (4) lighting; and
- (5) landscape and fencing.

To this list, the Hearing Examiner would add :

(6) swimming and related activities, both physical and social

Technical Staff set forth its findings as follows (Exhibit 45, p. 11):

In reviewing the application, staff finds that the inherent characteristics of size, scale and scope associated with a community swimming pool and associated activities have been mitigated through the applicable conditions of approval and not likely to result in any unacceptable noise, traffic disruption, or environmental impacts at the proposed location. Adequate parking is available for the employees and swim team events and activities under the existing special exception. There are no new buildings proposed for the property.

In reviewing the landscaping coverage around the property, staff notes that the foliage of trees and plants are beginning to fill in. Because the property is adjacent to public park property to the east and south, staff finds the level of landscaping screening to be adequate. At the northern boundary line behind the residential lots facing Tilden Woods, staff finds that the existing wooden fence and tall hedges provide adequate screening from the parking lot. At the western boundary line shared with single-family homes facing Stonewood Terrace, the planting along the chain linked fence provide a thicket that provides adequate screening. Within the coming weeks, it is expected that the visibility from the Stonewood Terrace property will be reduced further as more foliage appears.

However, staff does not support the community swimming pool hosting a 5K Run at the site. It is not clear how the proposed 5K Run has any relationship to the existing and expected activities of a community swimming pool. Furthermore, the applicant has indicated that the race will not be held at the swim club during the 2011 swim season. Staff also understands that a race through the neighborhood must begin with an application to the County's Department of Transportation (DOT) for a permit and approval. Therefore, staff believes that the applicant should consult with appropriate County agencies about the possibility of hosting such an event rather than link the event to the existing special exception.

Based on the evidence of record, the Hearing Examiner generally agrees with Technical Staff's conclusions. As discussed in Part II. D. 6. of this report, the proposed 5K run does not bear any relation to the expected operation of a community swimming pool, and should not be permitted. The other activities, some of which are inherent in the operation of a community swimming pool, and some of which are not, are sufficiently controlled by the Statement of Operations and Transportation

Management Plan, as amended by the Hearing Examiner, and the conditions recommended in Part V of this report.

B. General Standards

Most of the general standards for a special exception are found in Section 59-G-1.21(a); however, pursuant to §59-G-2.56, the General Standards as set forth in §1.21(a) do not apply to Community Swimming Pools. Other general standards do apply, and they are addressed in Part IV. D. of this report. We turn now to the specific standards for community swimming pools.

C. Specific Standards: Community Swimming Pools

The specific standards for a community swimming pool are found in Zoning Ordinance § 59-G-2.56. The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the revised modifications, except for the proposed 5K run, would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.56. Swimming pools, community

The provisions of subsection 59-G-1.21(a) do not apply to this section. In any zone, a community swimming pool may be allowed provided that such use of land will conform to the following minimum requirements:

(a) The swimming pool, including the apron and any buildings, must not at any point be closer than 75 feet from the nearest property line nor closer than 125 feet from any existing single-family or two-family dwelling; provided, that where the lot upon which it is located abuts a railroad right-of-way, publicly owned land or land in a commercial or industrial zone such pool may be constructed not less than 25 feet at any point from such railroad right-of-way, publicly owned land or commercial or industrial zone. Any buildings erected on the site of any such pool must comply with the yard requirements of the zone in which the pool is located.

Conclusion: The swimming pool, including its apron, and the pump house were approved by the Board with the original site plan for the special exception. Since there is no proposal

to modify the swimming pool and its apron, or to modify the pump house, their setbacks are not considered herein.²¹ The shade structures were added later, but they are structures, not buildings, and are therefore not governed by this provision. A “bump-out” was also added to the pool house building after the initial approval, but there is no allegation that the pool house, with its present configuration, fails to meet all applicable setbacks. Moreover, the Hearing Examiner found, in his report of June 28, 2010, in CBA-1383 (p. 42), that the pool house expansion and the addition of the shade structures did not change the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected. The Hearing Examiner thus finds that Petitioner has complied with §59-G-2.56(a), to the extent that it applies to the modification petition.

(b) A public water supply must be available and must be used for the pool or use of a private supply of water for the pool will not have an adverse affect on the water supply of the community.

Conclusion: Technical Staff notes that the water supply is not an issue in this case, as it was approved under the initial special exception Exhibit 45, p. 14. Since there is no request to increase the pool size or demand of the pool on the water system, the Hearing Examiner agrees.

²¹ Mr. Sadoff challenges the setback of the pump house building because it is less than 25 feet from eastern lot line, which abuts publicly owned land. Exhibit 25, pp. 58-61. DPS, in a letter dated March 3, 2011 (Exhibit 24(f)), disagrees with Mr. Sadoff because Zoning Ordinance §59-G-2.56(a) specifies that the swimming pool itself, must be set back at least 25 feet from the publicly owned property, but the buildings erected on the site of any such pool must merely comply with the yard requirements of the zone in which the pool is located. DPS therefore reasoned that the pump house, being an “accessory building,” need be set back only 5 feet from the publicly owned land in the R-90 Zone, pursuant to Zoning Ordinance §59-C-1.326(a)(3). DPS applied the same rule to approve the location of the shade structures on the southern part of the site, which also abut publicly owned land. As indicated in the main text above, the Hearing Examiner does not reach the issue regarding the pump house because no modification is requested in regard thereto. The Hearing Examiner also finds that §59-G-2.56(a), by its own terms, applies to the pool and its apron, and to buildings on the site, but not to all structures.

(c) *When the lot on which any such pool is located abuts the rear or side lot line of, or is across the street from, any land in a residential zone, other than publicly owned land, a wall, fence or shrubbery must be erected or planted so as to substantially screen such pool from view from the nearest property of such land in a residential zone.*

Conclusion: The issue of appropriate landscaping was discussed at length in Part II. C. 3. of his report. Based on the record of this case, including the expert testimony and Technical Staff's review and approval of the final landscape plan (Exhibit 76(h)), the Hearing Examiner finds that Petitioner's proposal will provide the substantial screening required by this section.

(d) *The following additional requirements must also be met: Special conditions deemed necessary to safeguard the general community interest and welfare, such as provisions for off-street parking, additional fencing or planting or other landscaping, additional setback from property lines, location and arrangement of lighting, compliance with County noise standards and other reasonable requirements, including a showing of financial responsibility by the applicant, may be required by the Board as requisite to the grant of a special exception. Financial responsibility must not be construed to mean a showing of a 100 percent cash position at the time of application but is construed to mean at least 60 percent.*

Conclusion: Nothing in the modification petition requires a re-examination of the question of Petitioner's financial responsibility, and that issue is therefore not before the Hearing Examiner. Special conditions "deemed necessary to safeguard the general community interest and welfare, such as provisions for off-street parking, additional fencing or planting or other landscaping, additional setback from property lines, location and arrangement of lighting, compliance with County noise standards and other reasonable requirements . . ." have all been discussed at great length in Parts II. C. and D. of this report, and recommended conditions are set forth in Part V of this report. The Hearing Examiner finds that the conditions recommended in Part V of this report, including the

revised Statement of Operations (Appendix A) and the Transportation Management Plan (Appendix B), will adequately safeguard the general community interest and welfare in accordance with this provision.

D. Additional Applicable Standards

59-G § 1.23. General development standards

- (a) ***Development Standards.*** *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The following Table from Technical Staff Report (Exhibit 45, p. 12) demonstrates compliance with the listed development standards:

Development Standard Table

	<u>REQUIRED</u>	<u>PROPOSED/EXISTING</u>
Minimum lot area	9,000 sq. ft.	1.92 acres (approx. 84,635 s.f.)
Setbacks		
Front	30 feet	210 feet approx.
Side (1)	8 feet	111.3 feet
Sum of Both	25 feet	280 feet
Rear	30 feet	102.6 feet
Minimum lot width (59-C-1.322)		
at street line	25 feet	87 feet
at building line	75 feet	325 feet
Maximum building height	2½ stories or 35 feet	1-story
Parking Spaces		
1 space per 7 persons of pool capacity. Pool capacity = 428	62 spaces	64 spaces

- (b) ***Parking requirements.*** *Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: With regard to this section, Technical Staff states (Exhibit 45, p. 12):

The use is in compliance with the requirements of Section 59-E for parking requirements since the existing parking facilities were approved as part of the existing special exception and the number of parking spaces will not change under the modification to the special exception. The existing parking lot is proposed to be re-striped as shown on the attached special exception site plan. Section 59-E-3.7 requires one space for every seven bathers. As such, the required parking number is calculated by first determining the combined total pool capacity of the main swimming pool and tot pool located on site pursuant to COMAR 10.17.01.19 user load requirements. The Montgomery County Department of Health and Human Services has confirmed the user load of the Swim Club's existing pool surface areas to be 428 bathers. Therefore, in accordance with Section 59-E-3.7, the number of parking spaces required to be provided on site is 62 spaces ($428 \div 7$). The proposed site plan provides 64 spaces.

Moreover, as mentioned, a Transportation Management Plan (Appendix B) has been provided and revised, as necessary, to better ensure that during special events, the parking demands of the facility do not result in overflow parking that will unduly impact on the nearby neighbors.

(c) ***Minimum frontage.*** * * *

Conclusion: By its terms, this section applies only to specified types of special exceptions. Since

Community Swimming Pools are not listed, this section is inapplicable.

(d) ***Forest conservation.*** *If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: As reported by Technical Staff (Exhibit 45, p. 13),

The subject site is not located within a special protection area or primary management area nor is subject to a tree save plan. An exemption from having a Forest Conservation Plan has been granted because the modification is to an existing special exception that was approved. The requested modification will not result in the clearing of forest. The . . . exemption letter #42011092E was issued by the Environmental Planning Division on December 22, 2010. Therefore, it is not necessary for the Board to act on a forest conservation plan.

- (e) **Water quality plan.** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: This provision is not applicable because the subject site is not located in a special protection area.

- (f) **Signs.** *The display of a sign must comply with Article 59-F.*

Conclusion: Petitioner has an existing sign at the front entrance gate. There is no proposal for new signage on the property as part of this modification request. Exhibit 45, p. 13; Tr. 95-96.

- (g) **Building compatibility in residential zones.** *Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: The modification seeks approval of as-built structures. There is no evidence that they are not compatible with their surroundings; rather the issue is with regard to fencing, screening and lighting, as discussed at length in Part II. C. of this report. Nevertheless, Technical Staff found that “[t]he scale and height of the existing buildings/structures are in harmony with the single-family homes in the neighborhood.” Exhibit 45, p. 13.

- (h) **Lighting in residential zones.** *All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

- (1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*
- (2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: As discussed in Part II. C. 2. of this report, the proposed lights would not result in lighting in excess of 0.1 footcandles at the side and rear property lines, nor will it allow direct lighting to improperly intrude into adjacent residential properties. Unshielded lighting identified as having allowed glare to affect the adjacent neighbors will be replaced with new shielded fixtures.

59-G-1.24. Neighborhood need.

In addition to the findings and requirements of Article 59-G, the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:

- * * *
- (5) *Swimming pool, community.*
- * * *

Conclusion: Evidence of neighborhood need is not at issue here because the swimming pool was long ago approved by the Board, establishing the need, and nothing in the modification petition impacts on the issue of need.

59-G-1.25. County need.

In addition to the findings of Article 59-G, the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:

Conclusion: There is no County need requirement for community swimming pools.

59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: The modification seeks approval of as-built structures. There is no evidence that they are not compatible with their surroundings; rather the issue is with regard to fencing, screening and lighting, as discussed at length in Part II. C. of this report. Nevertheless, Technical Staff found that “[t]he scale and height of the existing buildings/structures are in harmony with the single-family homes in the neighborhood.” Exhibit 45, p. 13.

Based on the testimony and evidence of record, I conclude that, except for the proposed 5K run, the changes proposed by Petitioner, as conditioned in Part V of this report, will meet the applicable requirements for the proposed use.

V. RECOMMENDATION

Based on the foregoing analysis and a thorough review of the entire record, I recommend that Petition No. CBA-1383-A for modification of the existing special exception to allow changes to the facilities and operations, be GRANTED in part and DENIED in part, subject to the conditions listed below. Specifically, I recommend that the request to host an annual 5 K run be DENIED, that all proposed changes to the physical facilities be GRANTED, and that proposed operations and facilities be subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. All terms and conditions of the approved special exception remain in full force and effect, except as modified in the Board's order granting portions of this modification request.
3. The membership of the community swimming pool is limited to 350 families and a maximum of 12 employees on the site at any one time.
4. The community swimming pool operating season may begin no earlier than on May 1st and must end no later than on September 30th in any given calendar year.
5. Hours of Operations are limited to:
 - a. Sunday – 11:00 a.m. to 9:00 p.m. and 9:00 a.m. to 9:00 p.m. Monday-Saturday. Six late nights of operation are permitted until 11:00 p.m., except as specified in subpart "e," below.
 - b. Early Morning Lap Swim for members of the pool only, Monday through Friday 7:00 a.m. to 8:00 a.m., which must be restricted to no more than 25 members.
 - c. Swim Team Weekday practice must begin no earlier than 8:30 a.m.
 - d. Swim Team early morning Advanced Swimmer warm-up for up to a maximum of 25 swimmers on a maximum of six (6) Saturdays, from 6:30 a.m. to 7:30 a.m., during the Swim Meet season.
 - e. One of the six late nights may be devoted to the annual all-night "lock-in." On that one night, the pool hours would be extended from 11:00 p.m. to 6:30 a.m., the following day. However, no amplified noise and no amplified music at all are permitted during the lock-in (*i.e.*, not even CD players, or the like); no diving board or volleyball is permitted after 9:00 p.m.; Children must be out of the pool by 10:00 p.m.; carpooling must be used to minimize traffic to the pool when the children are picked up in the morning; and pick-up must be in the corner of the site farthest away from the neighbors. The impacts of the year's lock-in must be an annual topic at the mid-season meeting of the Community Liaison Council, with reference to it in the minutes filed with the Board, so that the Board can review whether Petitioner has kept adverse impacts to a minimum. The Board will retain jurisdiction and consider revocation of this permission if impacts become undue.
6. Swim Meets Hosted at the Pool are limited to:
 - a. The maximum number of swim meets conducted at the site during the swim meet season must be limited to a maximum of eight (8).²² A

²² The elimination of divisional meets, as recommended by Technical Staff has reduced the number of total meets from nine to eight and the number of Saturday meets from five to four.

maximum of four meets (4) may occur on Saturdays, and a maximum of four (4) may occur on weekday evenings, within the approved hours of operation. In the event of a weather related delay, nothing in this condition is intended to preclude a scheduled meet from being re-scheduled or continued to a following day within the approved hours of operation.

- b. Except as provided in condition 5.d., above, general warm-ups for swimmers during Swim Meet season must begin no earlier than 7:30 a.m. on Saturdays.
 - c. Petitioner may host a Time Meet on one (1) Saturday per the meet season within the approved hours of operation and a Mini-Meet on a weekday within the approved hours of operation. Petitioner must not host Divisional swim meets at the Pool.
7. The organized and neighborhood events may be allowed to continue in accordance with the limitations as specified in the amended Statement of Operations. The total number of organized events must not exceed ten (10) during the operating season and must avoid overlap with any swim meets. Certain “organized events” (*e.g.*, holiday socials/parties, adult parties) may include food service and/or alcohol service on site, with all required County permits obtained for said events by the Petitioner.
 8. All operations must conform to the requirements of the Montgomery County Noise Control Ordinance (Chapter 31B of the County Code). Specifically, noise levels cannot exceed 65 dBA at the property line during daytime hours, and cannot exceed 55 dBA at the property line during nighttime hours. Daytime is defined as the hours between 7:00 a.m. to 9:00 p.m. weekdays and between 9:00 a.m. and 9:00 p.m. on weekends and holidays; nighttime is between 9:00 p.m. to 7:00 a.m. weekdays and between 9:00 p.m. and 9:00 a.m. weekends and holidays.
 9. There must be no amplified noise (from any device) permitted before 9:00 a.m. or after 9:00 p.m. on the pool property except that the use of a standard swim meet starting system with a “buzzer” or “tone” in compliance with the Montgomery County Noise Ordinance is permitted to regulate swim meets.
 10. The use of non-amplified acoustic instruments to play only the National Anthem at the start of a swim meet is allowed.
 11. All lighting must be located, shielded and maintained so that no direct light or glare or reflection intrudes into adjacent and nearby residential properties. All internal and external lights must be turned off within 30 minutes of closing.
 12. Petitioner must plant and maintain the landscaping and fencing required by the approved landscape plan (Exhibit 76(h)), except that the six new trees should be planted at an initial

height of six to seven feet, rather than five to six feet as stated in the Landscape Plan. The grounds of the property must be properly maintained throughout the year. This includes removal of landscaping and lawn waste from the property, which must not be deposited in the adjoining park or properties.

13. Petitioner must comply with the specifications of the Special Exception Site Plan (Exhibit 76(f)) and the Lighting Plan (Exhibit 76(g)).
14. Petitioner must comply with the terms of its Statement of Operations (Appendix A) and Transportation Management Plan (Appendix B), but the conditions specified in the Board's Resolution control in the event of any conflict. The Statement of Operations and the TMP must be posted at the pool in an area accessible to members, and the Statement of Operations and the TMP must be posted on Petitioner's web site in a manner accessible to the public. The Board will retain jurisdiction to modify the Statement of Operations and the TMP as necessary should their current provisions prove inadequate.
15. Petitioner must create a Community Liaison Council (CLC) to discuss and address operating impacts and other issues of concern to the Petitioner and/or the community. The CLC shall consist of the Petitioner, the Petitioner's representative and representatives from any civic association, homeowner association or resident within the defined neighborhood wishing to participate. Petitioner's representative will also serve as a contact person for complaints by the neighbors, and therefore Petitioner must post the name and contact information for its representative on its web site. A record of any neighbor complaints must be filed with Board of Appeals on an annual basis. Meetings of the CLC must be held three times a year to be scheduled as follows: a meeting before the start of the operating season, a meeting during the operating season, and a meeting after the end of the operating season. Meeting minutes must be kept by the Petitioner and filed with the Board of Appeals (BOA) on an annual basis.
16. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: June 24, 2011

Respectfully submitted,

Martin L. Grossman
Hearing Examiner

TILDEN WOODS RECREATION ASSOCIATION, INC.
CASE NO. CBA-1383-A

STATEMENT OF OPERATIONS

I. INTRODUCTION / BACKGROUND

The Tilden Woods Recreation Association, Inc. is a Maryland non-profit corporation organized to own and operate a community swimming pool. The subject property is known as Parcel “B” of the Tilden Woods Subdivision, located at 6806 Tilden Lane, Rockville, Maryland and consists of approximately 1.92 acres of land in the R-90 Zone. The Association originally purchased the subject property in 1962 and obtained approval of a special exception for a community swimming pool from the Board of Appeals in March of 1963, in Case No. CBA-1383.

In developing this Statement of Operations, the Association seeks to improve and further enhance its ability to serve and be an asset to the surrounding community. By detailing its operational parameters and establishing a Neighborhood Liaison Committee (further discussed in Section VI below) as other similar community swimming pool organizations in Montgomery County have done in recent years, it is the Association’s intent to foster and facilitate more open lines of communication with its neighbors and to provide a structured and accessible means of addressing concerns and/or issues that may arise with regard to the Association’s operations from time to time.

II. MEMBERSHIP

The approved special exception permits a total membership of 350 families. No change to the approved membership level is being requested in Case No. CBA-1383-A.

Each active family membership (i.e., adult family, young family, single parent family or couple membership) is equivalent to one (1) family membership. Each active single membership (i.e., one individual) is equivalent to one-half (1/2) a family membership. Inactive memberships will not be included.

III. OPERATIONS

A. Operating Season

1. **Background:** The Swim Club was originally approved by the Board of Appeals with no restriction/limitation on the months of operation. However, based on the Swim Club's historic usage of the site, the Swim Club proposes to establish herein an "Operating Season" which sets forth the allowable months of operation for the site, as follows:
 - a. **Operating Season:** The community swimming pool operating season may begin no earlier than May 1st and end no later than and inclusive of September 30th in any given calendar year.
 - b. The total number of organized events must not exceed ten (10) during the operating season and must avoid overlap with any swim meets.
 - c. No more than two (2) organized group activities, including swim team activities or social events, shall take place between Labor Day and the end of September.
 - d. Aside from accessing/opening the site for maintenance/security purposes, the site will be closed to any individual/group use from October 1st to April 30th.

2. As indicated above, the proposed Operating Season is based on the historic usage of the Swim Club site. The heaviest volume of use of the site occurs during the 14-week “Summer Swim Season”, commonly accepted as beginning the last weekend of May (i.e., Memorial Day weekend) and ending after the first weekend in September (i.e., Labor Day weekend). However, since the Swim Club’s pools are heated, the Swim Club has in years past had occasion to open its swimming pool earlier and close the pool later, depending on when the warm weather arrives/leaves in a given season. In addition, the proposed Operating Season is to accommodate allowable special events on the site (discussed in more detail under Section III.E. below) which can occur beyond the 14-week “Summer Swim Season”.

B. Swim Meets

1. **Background:** The Swim Club participates in the Montgomery County Swim League (MCSL), which coordinates competitive swim meets between/amongst swim clubs organized throughout the County, known as “A” meets held on Saturday mornings. The Swim Club also takes part in “B” meets held on Wednesday evenings that are independently organized amongst swim clubs. The “A” meets always get scheduled on Saturdays and “B” meets always on Wednesdays, but if a particular meet gets canceled due to severe weather on the scheduled day, it could get rescheduled to the following day or evening.

The “Competitive Swim Meet Season” (hereinafter “Meet Season”) runs from mid-June to late July (approximately a 7-week period) during the Swim Club’s

Operating Season. Participants who compete in either of the above “A” or “B” meets are children of member families and constitute the Tilden Woods Swim Team (hereinafter “Swim Team”).

2. Type and Number of Swim Meets That May Be Hosted at the Swim Club Site:

The maximum number of competitive swim meets that might be conducted at the Swim Club site during the Meet Season is a total of nine (8) swim meets, of which a maximum of four (4) may occur on Saturday mornings and a maximum of four (4) may occur on a weekday evening within the approved hours of operation. In the event of a weather related delay, nothing stated herein is intended to preclude a scheduled meet from being re-scheduled or continued to a following day within the approved hours of operation.

- a. MCSL “A” Meets: A maximum of three (3) “A” meets may be hosted at the Swim Club site each Meet Season.
- b. Wednesday “B” Meets: A maximum of three (3) “B” meets may be hosted at the Swim Club site each Meet Season.
- c. Time Trial Meet: The Swim Club conducts a “Time Trial” meet at the Swim Club site each Meet Season to determine the qualifying swimmers that will compete in the MCSL “A” meets.
- d. Mini-Meet: The Swim Club conducts a “Mini-Meet” at the Swim Club site each Meet Season to provide younger swimmers with an opportunity to experience a competitive swim meet environment.

3. Summary of Additional Hours of Operations to Accommodate Swim Meets

Conducted at Swim Club Site: [NOTE: The approved hours of operation for the

Swim Club under the original 1963 Opinion of the Board are as follows: *“The hours of operation shall be from 9:00 AM to 9:00 PM, six days a week, and from 11:00 AM to 9:00 PM on Sunday. There may be six late nights of operation no later than 11:00 PM.”]*

The following summarizes the additional hours of operation requested by the Swim Club in Case No. CBA-1383-A to better accommodate the swim meets that are **hosted** at the Swim Club site, described in Section III.B.2. above:

- a. Saturday Morning “A” Meets:
 - i. No change required from Swim Club’s approved hours of operation.
- b. Wednesday Evening “B” Meets:
 - i. No change required from Swim Club’s approved hours of operation.
- c. Time Trial Meet:
 - i. No change required from Swim Club’s approved hours of operation.
- d. Mini-Meet:
 - i. No change required from Swim Club’s approved hours of operation.

C. Swim Team Practice/Warm-Up Activities and Early Morning Lap Swim Program

- 1. **Background:** Included in the Swim Club’s modification request are changes to its approved hours of operations to better accommodate the practice and warm-up needs of its Swim Team, as well as to accommodate early morning lap swimming as an exercise option for general members of the Club.

- a. **Weekday Swim Team Practice:** Members of the Tilden Woods Swim Team practice on weekday mornings no earlier than 8:30 AM. This allows Swim Team members who have summer jobs or attend summer school or college exam prep classes to be able to practice and get to those other commitments on time.
- b. **Warm-Up Prior to MCSL Saturday “A” Meets:** There are a total of six (6) MCSL Saturday “A” meets held each Meet Season, of which only a maximum of three (3) are hosted at the Swim Club site each Meet Season as indicated in Section III.B.2.a. above. However, prior to each MCSL “A” meet, regardless of whether or not hosted at the Swim Club, members of the Swim Team require access to the Swim Club’s pool for warm-up.
 - i. Warm-up for advanced swimmers would start at 6:30 AM and end by 7:30 AM on Saturdays prior to every MCSL “A” meet and be restricted to no more than 25 swimmers during that period of time.
 - ii. General warm-up for other members of the Swim Team would follow from 7:30 AM to 9:00 AM, but occurs only prior to an MCSL “A” meet hosted at the site.
- c. **Warm-Up Prior to Time Trial Meet:** As discussed in Section III.B.2.c. above, the Swim Club conducts a “Time Trial” meet at the Swim Club site each Meet Season on the Saturday one week prior to the first MCSL “A” meet. Prior to the start of the Time Trial meet, Swim Team members require early access to pool facilities to begin warm-up.
 - i. Advanced swimmers may begin warm-up at 6:30 AM, with general warm-up for other members of the Swim Team starting no earlier than 7:30 AM.

- d. **Early Morning Lap Swim Program:** The Swim Club has received requests in the past from some of its membership for access to pool facilities to accommodate an early morning lap swim as an exercise option. The Swim Club would allow early morning access to pool facilities only to members that have pre-registered for this program and would restrict participation to no more than 25 members per Operating Season.

2. **Summary of Additional Hours of Operations to Accommodate Swim Team**

Practice/Warm-Up Activities and Early Morning Lap Swim Program: [NOTE: The approved hours of operation for the Swim Club under the original 1963 Opinion of the Board are as follows: *“The hours of operation shall be from 9:00 AM to 9:00 PM, six days a week, and from 11:00 AM to 9:00 PM on Sunday. There may be six late nights of operation no later than 11:00 PM.”*]

The following summarizes the additional hours of operation requested by the Swim Club in Case No. CBA-1383-A to better accommodate the Swim Team practice and warm-up activities, as well as to facilitate the proposed early morning lap swim program, all described in Section III.C.1. above:

- a. **Weekday Swim Team Practice** (during 6 weeks out of the 7-week Meet Season):
 - i. Access to Swim Club’s pool facilities for Swim Team members beginning at 8:30 AM on weekdays.
- b. **Warm-Up Prior to MCSL Saturday “A” Meets** (total of six (6) Saturdays during Meet Season):

- i. Access to Swim Club's pool facilities for Swim Team members (advanced swimmers only; restricted to no more than 25 swimmers) at 6:30 AM (not limited to meets hosted at the site).
- ii. Access to Swim Club's pool facilities for other Swim Team members at 7:30 AM (only prior to meets hosted at the site).
- c. **Warm-Up Prior to Time Trial Meet** (one Saturday during Meet Season):
 - i. Access to Swim Club's pool facilities for Swim Team members (advanced swimmers only) at 6:30 AM
 - ii. Access to Swim Club's pool facilities for other Swim Team members at 7:30 AM.
- d. **Early Morning Lap Swim Program:**
 - i. Access to Swim Club's pool facilities for pre-registered members from 7:00 AM to 8:00 AM on weekdays. Participation in program restricted to no more than 25 members per Operating Season.

D. Swim Team - Special Event

- 1. **Annual Lock-In:** The Annual Lock-In is a special event organized for members of the Tilden Woods Swim Team held at the end of each Meet Season to celebrate the accomplishments of that year's team. It is held on a weekend after the year's Divisional Meet in late July and is fully chaperoned by adult members of the Swim Club (generally the parents of Swim Team members).
 - a. The attendance level of this event has averaged between 125-150 members, including the adult chaperones.
 - b. The event will be fully subject to the restrictions in Section III.. D. 2. below, the noise restrictions outlined in Section III.G. below and the parking restrictions outlined in Section IV.B. below, as well as compliance with the Swim Club's approved Transportation Management Plan.

2. **Summary of Additional Hours of Operations to Accommodate Annual Lock-In**

Event: [NOTE: The approved hours of operation for the Swim Club under the original 1963 Opinion of the Board are as follows: *“The hours of operation shall be from 9:00 AM to 9:00 PM, six days a week, and from 11:00 AM to 9:00 PM on Sunday. There may be six late nights of operation no later than 11:00 PM.”*]

- a. As indicated above, the Swim Club’s current approval permits up to six (6) late nights of operation to no later than 11:00 PM. The Annual Lock-In Event if only held until 11:00 PM does not require approval of additional hours of operation to accommodate, but would certainly count toward one of the six (6) allowable late nights of operation.
- b. One of the six late nights may be devoted to the annual all-night “lock-in.” On that one night, the pool hours would be extended from 11:00 p.m. to 6:30 a.m., the following day. However, no amplified noise and no amplified music at all are permitted during the lock-in (*i.e.*, not even CD players, or the like); no diving board or volleyball is permitted after 9:00 p.m.; Children must be out of the pool by 10:00 p.m.; carpooling must be used to minimize traffic to the pool when the children are picked up in the morning; and pick-up must be in the corner of the site farthest away from the neighbors. The impacts of the year’s lock-in must be an annual topic at the mid-season meeting of the Community Liaison Council, with reference to it in the minutes filed with the Board, so that the Board can review whether Petitioner has kept adverse impacts to a minimum. The

Board will retain jurisdiction and consider revocation of this permission if impacts become undue.

E. Organized Events

1. “Organized events” that have been held at the Swim Club site include the type of events commonly held at community swim clubs for members and guests, and can be grouped into several categories, as follows:
 - a. **Family Gathering Events:** Includes holiday socials/parties, i.e., 4th of July, Labor Day, Halloween, and events such as the Dads’ Pancake Breakfast – these are family activities that involve general members of the Swim Club and their guests. They occur during normal operating hours and may include pot-lock meals or use of portable barbeques for group meals.
 - i. The attendance level for this type of event can range between 50-200 members and guests.
 - b. **Adult Parties:** Includes Swim Club anniversary party or other adult social events/fundraisers – these are social activities open to the general membership of the pool and their guests, that occur during normal operating hours or utilize one of the allowed late evenings of operation until 11:00 PM, and may include food prepared by members or purchased for the event.
 - i. The attendance level for this type of event can range between 50-200 members and guests.

- c. **Member Birthday Parties:** Member birthday parties with 25 attendees or more require an additional staff to be brought on duty and, as such, are considered by the Swim Club to rise to the level of an “organized event”.
 - i. Large birthday parties of greater than 25 attendees are a very rare occurrence at the Swim Club.
- d. **Neighborhood Events:** Includes events such as the “Doggie Dip” and the Luxmanor Elementary School Graduation Party.
 - i. The “Doggie Dip” is an event that could occur immediately before the Swim Club closes the swimming pool for the season. Members and guests from the neighborhood are invited to let their dogs have a dip in the pool. The event generally occurs on Labor Day in the evening and ends before 9:00 PM.
 - a) The attendance level for this type of event has been at most 50 members/guests and their pets.
 - b) No traffic/parking issues have ever been observed as a result of this event since most attendees walk to the site with their dog.
 - ii. Luxmanor Elementary School Graduation Party – members of the Swim Club graduating from Luxmanor have hosted a graduation party at the Swim Club.
 - a) The attendance level for this type of event can range between 50-75 members/guests.
- d. **Sports Tournament:** The Swim Club may organize a volleyball tournament or other lawn game tournament for members and guests during the Swim Club’s Operating Season. There is only one sand volleyball

court and limited lawn area on site. As such, tournaments do not draw large crowds and never generate any parking issues.

- i. The attendance level for this type of event ranges between 25-50 members and guests.
2. The total number of “organized events” held at the Swim Club generally do not exceed ten (10) per Operating Season.
 - a. All organized events occur only during normal operating hours and no more than one (1) organized event is scheduled to occur at any one time on the site.
 - b. Certain “organized events” (e.g., holiday socials/parties, adult parties) also may include food service and/or alcohol service on site, with all required County permits obtained for said events by the Swim Club.
 - c. In addition, such organized events are scheduled by the Swim Club such that they avoid overlap with any swim meets to be hosted at the site.
3. None of the “organized events” listed above have created traffic/parking issues such as overflow parking onto adjacent public streets or queuing/stacking at the site entrance in the past. However, precautions will be undertaken by the Swim Club for any “organize event” held on site pursuant to measures outlined in the Transportation Management Plan herein to ensure that parking/traffic impacts to adjacent residential neighbors, if any, are minimized.

F. Other Events/Activities

1. The following describes certain other events/activities routinely offered by the Swim Club that do not rise to the level of “organized events” but rather are more accurately described as “user incentives or amenities” offered as a means of

encouraging and enhancing the use and enjoyment of the Swim Club's facilities by its members and guests. These may include the following types of events/activities:

- a. "Grill and Chill" Dinners by the Pool Night
- b. Small group birthday "swim and cake" celebrations (less than 25 attendees)
- c. Bring Your Own Raft Night
- d. "Age Specific" Evenings at the Pool (e.g. high school kids, middle school kids)
- e. Friday Afternoon Socials for New Members
- f. Friday Pre-Swim Meet - Swim Team Gatherings
- g. Evening Playing Card Gatherings
- h. Ice Cream/Carmen's Italian Ice Night at the Pool

G. Amplification Devices

1. Restricted Hours of Use

No amplified noise (by any device) shall be permitted before 9:00 AM. or after 9:00 PM on the pool property except that the use of a standard swim meet starting system with a "buzzer" or "tone" in compliance with the Montgomery County Noise Ordinance is permitted to regulate swim meets.

2. Montgomery County Noise Ordinance Compliance

Any amplified noise on-site shall strictly comply with the Montgomery County noise ordinance and in accordance with any recommendations by the noise program

manager of the Division of Environmental Policy and Compliance, Montgomery County Department of Environmental Protection.

3. Swim Meet Starting System

- a. Use of a standard swim meet starting system with a “buzzer” or “tone” that complies with the Montgomery County Noise Ordinance and other applicable guidelines, is permitted to regulate swim meets.

4. Speaker System

- a. Two (2) portable speakers with hand-held microphone may be used during swim meets but only to announce events and/or make necessary safety/emergency type of announcements. At no time, shall the speaker system be used for the playing of music at swim meets or on any other occasion.

5. Music may be played on the pool grounds during no more than six (6) special events or organized events held in any Operating Season pursuant to the following restrictions:

- a. No music will be played by a means different from, or to a level greater than that of a usual and conventional home reproduction system, i.e., CD player/stereo. Under no circumstances shall the speaker system described above in Section III.G.4.a. be used for the playing of music on the pool grounds.
- b. Use of non-amplified acoustic instruments to play only the National Anthem at the start of a swim meet may be allowed.
- c. On no occasion will the County Noise Ordinance be violated.

H. Lighting

1. All internal and external lights will be turned off within ½ hour of closing.

I. Maintenance

1. The grounds of the property, including the landscaping and fencing, must be properly maintained throughout the year. This includes removal of landscaping and lawn waste from the property, which must not be deposited in the adjoining park or properties.

IV. PARKING

- A.** Vehicles arriving or dropping off passengers prior to 7:30 a.m. for Swim Team warm-ups/meet preparation and/or early morning lap swimming shall be permitted to park and/or drop off only in the eastern end of the parking lot, in order to minimize any potential disturbance to adjacent residences.
- B.** Vehicles either leaving from or arriving to pick up individuals at the conclusion of the overnight Annual Lock-In event at or about 6:30a.m. the following Sunday morning, shall park in or pick-up individuals from the eastern end of the parking lot, in order to minimize any potential disturbance to adjacent residences. In addition, participating families will be required to carpool with at least three (3) Lock-In attendees per vehicle.
- C.** To improve safety at the main driveway entrance, the Association shall prohibit vehicles from engaging in drop-off or pick-up activity at or near the main driveway entrance located off of Tilden Lane by posting a sign prohibiting such activity, as well as by discouraging members and members' children from standing at or near the driveway entrance by having staff periodically monitor and warn individuals away from the area.
- D.** The Transportation Management Plan is incorporated herein by reference.

V. EMPLOYEES

The Swim Club does not directly employ individuals, but contracts with a management company that provides staff for operational management and maintenance of pool facilities. The maximum number of employees/staff from the management company (i.e., manager, assistant manager, maintenance, lifeguards, coaches, etc.) present on the site at any one time shall not exceed twelve (12).

VI. COMMUNITY LIAISON COUNCIL

The Petitioner must create a Community Liaison Council (CLC) to discuss and address operating impacts and other issues of concern to the Petitioner and/or the community. The CLC shall consist of the Petitioner, the Petitioner's representative and representatives from any civic association, homeowner association or resident within the defined neighborhood wishing to participate. Petitioner's representative will also serve as a contact person for complaints by the neighbors, and therefore Petitioner must post the name and contact information for its representative on its web site. A record of complaints by any neighbor must be filed with Board of Appeals on an annual basis. Meetings of the CLC must be held three times a year to be scheduled as follows: a meeting before the start of the operating season, a meeting during the operating season, and a meeting after the end of the operating season. Meeting minutes must be kept by the Petitioner and filed with the Board of Appeals (BOA) on an annual basis.

VII. POSTING OF THE STATEMENT OF OPERATIONS & TMP

The Statement of Operations and the TMP must be posted at the pool in an area accessible to members, and the Statement of Operations and the TMP must be posted on Petitioner's web site in a manner accessible to the public.

TRANSPORTATION MANAGEMENT PLAN**Tilden Woods Recreation Association
Case No. CBA-1383-A****I. Introduction**

The following document describes the transportation management strategies to be employed by the Tilden Woods Recreation Association (hereinafter “Swim Club” or “Club”). In an effort to address concerns raised by some of its residential neighbors, the Swim Club recognizes the need to actively manage traffic and on-street parking impacts generated by some of its activities/operations.

II. Background

The Swim Club is located at 6806 Tilden Lane in Rockville and occupies approximately two acres in the R-90 zone. The site was approved for use as a community swimming pool by the Board of Appeals in 1963 pursuant to Section 59-G-2.56 of the Zoning Ordinance. The original approval permits a maximum membership of 350 families and hours of operation as follows:

- 1) Monday to Saturday from 9:00 a.m. to 9:00 p.m.
- 2) Sunday from 11:00 a.m. to 9:00 p.m.
- 3) Six (6) late nights of operation until 11:00 p.m.

The subject site has one access drive located off of Tilden Lane, which is classified as a 70 foot wide primary residential street. The number of parking spaces required to be provided on site is 62 spaces pursuant to Section 59-E-3.7 of the Zoning Ordinance. The site will provide 64 parking spaces on site, of which 3 spaces will be handicap accessible.

The Swim Club’s present modification application (Case No. CBA-1383-A) does not seek to change/modify the approved membership cap. It does seek to update the Swim Club’s special exception approval to accurately reflect existing improvements on the site and to modify

its approved hours of operations to facilitate additional activities, such as early morning lap swimming for general members, early morning access to the pool for Swim Team practices and warm-ups prior to meets, among other things, all of which is more fully described in the Swim Club's Statement of Operations. This Transportation Management Plan, however, focuses only on those aspects of the Swim Club's existing and proposed operations that may require implementation of transportation management measures to help facilitate more efficient operations and to mitigate potential adverse impacts to the adjacent transportation network.

III. Operations

The Swim Club was originally approved by the Board of Appeals with no restriction/limitation on the months of operation. However, based on the Swim Club's historic usage of the site, the Swim Club proposes to establish an "Operating Season" which sets forth the allowable months of operation for the site, as follows:

- **Operating Season:** The community swimming pool operating season may begin no earlier than May 1st and end no later than and inclusive of September 30th in any given calendar year. The total number of organized events must not exceed ten (10) during the operating season and must avoid overlap with any swim meets.
- No more than two (2) organized group activities, including swim team activities or social events, shall take place between Labor Day and the end of September.
- Aside from accessing/opening the site for maintenance/security purposes, the site will be closed to any individual/group use from October 1st to April 30th.

A. Swim Meets

The Swim Club participates in the Montgomery County Swim League (MCSL), which coordinates competitive swim meets between/amongst swim clubs organized throughout the County, known as “A” meets held on Saturday mornings. The Swim Club also takes part in “B” meets held on Wednesday evenings that are independently organized amongst swim clubs. The “A” meets always get scheduled on Saturdays and “B” meets always on Wednesdays, but if a particular meet gets canceled due to severe weather on the scheduled day, it could get rescheduled to a following day or evening.

The “Competitive Swim Meet Season” (hereinafter “Meet Season”) runs from mid-June to late July (approximately a 7-week period) during the Swim Club’s Operating Season. Participants who compete in either of the above “A” or “B” meets are children of member families and constitute the Tilden Woods Swim Team (hereinafter “Swim Team”).

1. Total Number of Swim Meets That May Be Hosted at the Swim Club Site:

The maximum number of competitive swim meets that might be conducted at the Swim Club site during the Meet Season is a total of eight (8) swim meets, of which a maximum of four (4) may occur on Saturday mornings and a maximum of four (4) may occur on a weekday evening within the approved hours of operation. In the event of a weather related delay, nothing stated herein is intended to preclude a scheduled meet from being re-scheduled or continued to a following day within the approved hours of operation. (Additional details re the different types of swim meets that the Swim Team participates in are provided in Section III.B. of the Swim Club’s Statement of Operations.)

B. Swim Team Annual Lock-In - Special Event

The Annual Lock-In is a special event organized for members of the Tilden Woods Swim Team held at the end of each Meet Season to celebrate the accomplishments of that year's team. It is held on a weekend after the year's Divisional Meet in late July and is fully chaperoned by adult members of the Swim Club (generally the parents of Swim Team members).

1. If run as an overnight event, it begins on a Saturday evening at 4:30PM and ends at 6:30AM the following morning, Sunday.
2. The attendance level of this event has averaged between 125-150 members, including the adult chaperones.

C. Organized Events

"Organized events" held at the Swim Club site include the type of events commonly held at community swim clubs for members and guests, and can be grouped into several categories, as follows:

1. **Family Gathering Events:** Includes holiday socials/parties, i.e., 4th of July, Labor Day, Halloween, and events such as the Dads' Pancake Breakfast – these are family activities that involve general members of the Swim Club and their guests. They occur during normal operating hours and may include pot-lock meals or use of portable barbeques for group meals.
 - a. The attendance level for this type of event can range between 50-200 members and guests.

2. **Adult Parties:** Includes Swim Club anniversary party or other adult social events/fundraisers – these are social activities open to the general membership of the pool and their guests, that occur during normal operating hours or utilize one of the allowed late evenings of operation until 11:00PM, and may include food prepared by members or purchased for the event.
 - a. The attendance level for this type of event ranges between 50-200 members and guests.
3. **Member Birthday Parties:** Member birthday parties with 25 attendees or more require an additional staff to be brought on duty and, as such, are considered by the Swim Club to rise to the level of an “organized event”.
 - a. Large birthday parties of greater than 25 attendees are a very rare occurrence at the Swim Club.
4. **Neighborhood Events:** Includes events such as the “Doggie Dip” and the Luxmanor Elementary School Graduation Party.
 - a. The “Doggie Dip” is an event that could occur immediately before the Swim Club closes the swimming pool for the season. Members and guests from the neighborhood are invited to let their dogs have a dip in the pool. The event generally occurs on Labor Day in the evening and ends before 9:00PM.
 - i. The attendance level for this type of event has been on average 50 members/guests and their pets.
 - ii. No traffic/parking issues have ever been observed as a result of this event since most attendees walk to the site with their dog.

- b. Luxmanor Elementary School Graduation Party – members of the Swim Club graduating from Luxmanor have hosted a graduation party at the Swim Club.
 - i. The attendance level for this type of event can range between 50-75 members/guests.

- 5. **Sports Tournament:** The Swim Club may organize a volleyball tournament or other lawn game tournament for members and guests during the Swim Club's Operating Season. There is only one sand volleyball court and limited lawn area on site. As such, tournaments do not draw large crowds and never generate any parking issues.
 - a. The attendance level for this type of event ranges between 25-50 members and guests.

The total number of “organized events” held at the Swim Club generally do not exceed ten (10) per Operating Season.

- i. All “organized events” occur only during normal operating hours.
- ii. No more than one (1) “organized event” is scheduled to occur at any one time on the site.
- iii. In addition, “organized events” are scheduled by the Swim Club such that they avoid overlap with any swim meets to be hosted at the site.

None of the “organized events” listed above have created traffic/parking issues such as overflow parking onto adjacent public streets or queuing/stacking at the site entrance in the past. However, for the larger “organize events” (i.e., > 150 attendees) described above that may have the potential of creating parking/traffic impacts, the Swim Club will undertake certain precautions, as outlined in Section IV.C. below, in order to ensure that parking/traffic impacts to the adjacent public street, if any, are minimized.

D. Other Events/Activities

The following describes certain “other events/activities” routinely offered by the Swim Club that do not rise to the level of “organized events” but rather are more accurately described as “user incentives or amenities” offered as a means of encouraging and enhancing the use and enjoyment of the Swim Club’s facilities by its members and guests. These may include the following types of events/activities:

- i. “Grill and Chill” Dinners by the Pool Night
- ii. Small group birthday “swim and cake” celebrations (less than 25 attendees)
- iii. Bring Your Own Raft Night
- iv. “Age Specific” Evenings at the Pool (e.g. high school kids, middle school kids)
- v. Friday Afternoon Socials for New Members
- vi. Friday Pre-Swim Meet - Swim Team Gatherings
- vii. Evening Playing Card Gatherings
- viii. Ice Cream/Carmen’s Italian Ice Night at the Pool

None of the “other events/activities” listed above have created any type of traffic/parking issue that would require implementation of any transportation management strategies.

E. Employees

The Swim Club contracts with a management company that provides operational management and facility maintenance services during the swimming pool season, including maintenance personnel, lifeguards and coaches. The maximum number of staff/employees on the site at any one time is twelve (12).

IV. Summary of Transportation/Parking Management Plan

The following Transportation / Parking Management Plan seeks to achieve the following objectives:

- A. Manage, control and reduce as much as possible the amount of permitted on-street parking that might be generated by the Swim Club's operations, in particular as it relates to the eight (8) potential swim meets that could be hosted at the site described in Section III.A. above.
- B. Manage/facilitate safe and efficient drop-off and early morning pick-up operations for the proposed Annual Lock-In - Special Event, described in Section III.B. above, such that no queuing/stacking of vehicles occurs along the public street adjacent to the site entrance.
- C. Implement precautionary transportation management measures for the larger group "organized events" (i.e., 150 or more attendees), described in Section III.C. above that may have the potential of creating some parking/traffic impacts, such that parking/traffic impacts to the adjacent public street, if any, are minimized.

A. Management of Traffic and Overflow Parking for "Home" Swim Meets

The Swim Club will implement the following strategies to address any traffic or overflow parking impacts that might be caused by the eight (8) potential "home" swim meets conducted at the site each Operating Season.

- Station a Parking Attendant (i.e., Swim Club staff or member volunteer) at driveway entrance to ensure that traffic flows smoothly and safely without bottlenecks; and

- Require Parking Attendant to monitor and direct on-street parking such that vehicles are not parked illegally and residential driveways are not blocked; and
- Reposition pick-up/drop-off points deeper within the site parking lot to prevent queuing at the entrance; and
- Place orange traffic cones along the south side of Tilden Lane to prevent parking of cars within 15 feet of either side of the entrance drive; and
- Provide alternative off-street parking areas for potential overflow parking in the following manner:
 - Make reservations for use of the adjacent M-NCPPC-owned Tilden Woods Local Park (which includes use of its associated parking lot) to serve as an alternative parking area for Swim Club members and guests to reduce permitted on-street parking as much as possible; OR
 - If use of Tilden Woods Local Park is already reserved for use by others on a date/time of any swim meet or the date/time of the 5K Run special event, then the Swim Club will obtain permission to use the Old Tilden Middle School site or one of the other schools in the community as an alternative parking location for Swim Club members and guests.
- Close the pool facilities/grounds for general membership access/use during the meet/event so there will be no overlap in use; and
- Communicate with visiting swim teams and other anticipated swim team attendees via e-mail prior to meets and provide notice of the parking controls.

B. Management of Drop-Off/Pick-Up Operations for Annual Lock-In Special Event

The Annual Lock-In Special Event requested in the present modification application is an event for all swim team participants that occurs at the end of each swim season. This event does not generate any overflow parking impacts onto adjacent streets since, aside from the cars of the chaperones that stay on site for the entire event, most simply drop-off participants in the late afternoon/early evening on the day of the event (Saturday) and then leave the site. The event ends the next Sunday morning at 6:30a.m., at which point participants either walk home or get picked-up.

For this event, vehicles either dropping off participants on Saturday or arriving to pick up participants the following Sunday morning, shall be permitted to park in or pick-up individuals only from the eastern end of the parking lot, in order to minimize any potential disturbance to adjacent residences.

In addition, if planning to drive/be driven to the site for the event, participating families will be required to carpool with at least three (3) Lock-In attendees per vehicle.

C. Management of Potential Traffic and Overflow Parking for Larger Group “Organized Events” (i.e., >150 attendees), described in Section III. C.

The Swim Club will implement the following strategies as a precaution to ensure that traffic or overflow parking impacts that might be caused by some of the larger group “organized events” (i.e., > 150 attendees) described under Section III.C. herein are avoided to the maximum extent possible:

- Station a Parking Attendant (i.e., Swim Club staff or member volunteer) at driveway entrance to ensure that traffic flows smoothly and safely without bottlenecks; and
- Require Parking Attendant to monitor and direct on-street parking such that vehicles are not parked illegally and residential driveways are not blocked; and
- Place orange traffic cones along the south side of Tilden Lane to prevent parking of cars within 15 feet of either side of the entrance drive; and
- Communicate with members prior to event via e-mail regarding the parking controls and encourage/request that members planning to attend either walk or carpool to the event.
- Provide alternative off-street parking areas for potential overflow parking in the following manner:
 - Make reservations for use of the adjacent M-NCPPC-owned Tilden Woods Local Park (which includes use of its associated parking lot) to serve as an alternative parking area for Swim Club members and guests to reduce permitted on-street parking as much as possible; OR
 - If use of Tilden Woods Local Park is already reserved for use by others on the dates of the larger group “organized events” (i.e., > 150 attendees), then the Swim Club will obtain permission to use the Old Tilden Middle School site or one of the other school sites in the community as an alternative parking location for Swim Club members and guests.

V. Summary

The foregoing Transportation Management Plan is intended to help mitigate traffic/on-street parking impacts on adjacent street generated by certain Swim Club activities concerns over which have been raised by some of its residential neighbors. Through this Plan, it is the intent of the Swim Club to manage/regulate its activities such that pedestrian safety is maximized and vehicular congestion avoided at/near the site entrance, and that any on-street overflow parking on the adjacent street is managed/controlled to minimize disturbance/impacts as much as possible to adjacent residential neighbors.